



City of Glendale

Community Services & Parks Department

Tennis Concessions

at

Fremont & Glorietta Parks

Request for Proposals

2014

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Message to Proposers

The City of Glendale Community Services & Parks Department provides a wide variety of recreation, leisure and arts programs for all ages and interests, and manages one of the finest park and open space systems in the Southern California region. It is within the nature of the City of Glendale to provide its community quality service to enhance personal achievement and create unique experiences and opportunities.

The Department's Mission Statement is:

"To enhance the quality of life by providing safe and well-maintained parks and public places, preserving open space and historic resources, caring for people, strengthening the bonds of community and creating opportunities for renewal, growth, and enrichment".

The purpose of this Request for Proposals is to enable the Department to evaluate a list of candidates and select a qualified and experienced tennis professional to manage the tennis reservation concession.

The selected Concessionaire shall provide quality of various tennis services including, but not limited to: court reservations, classes, clinics, camps, tournaments, and events. The Concessionaire will also cultivate community connectedness and work cross-culturally with youth groups, schools, community groups and the business community to foster cultural harmony.

Thank you in advance for your interest in this Request for Proposals.

Jess Duran, Director
Community Services & Parks Department
City of Glendale

I. Introduction

A. Summary

The City of Glendale ("CITY") is soliciting proposals from suitably qualified tennis professionals and/or companies ("CONCESSIONAIRE") for the purpose of operating a tennis reservation system ("CONCESSION") at selected City of Glendale parks in accordance with the instructions and requirements in this Request for Proposals ("RFP"). As consideration for that certain right and privilege to operate, the CONCESSIONAIRE agrees to pay the CITY a fixed minimum fee plus a set percentage of net profits, as set forth in **Exhibit VI, Proposal Forms, page 25**.

The CONCESSIONAIRE may select one or both of the following parks:

- **Fremont Park** has eight (8) lit tennis courts and is located at 600 W. Hahn, Glendale, CA 91203. An aerial picture and site location is attached as **EXHIBIT I**. Fremont Park will be under construction from approximately February 1, 2015 through March 31, 2015. Work to be completed includes new light standards, new lights, and court resurfacing. The contract at Fremont Park will begin at the completion of the construction.
- **Glorietta Park** has four (4) lit tennis courts and is located at 2801 N. Verdugo, Glendale, CA, 91208. An aerial picture and site location is attached as **EXHIBIT II**.

If CONCESSIONAIRE is submitting proposals for multiple operations, (i.e. Fremont or Glorietta, or Fremont & Glorietta as a unit), a separate copy of EXHIBIT VI must be completed for each facility and included in the packet. Each application may include up to three (3) different versions of EXHIBIT VI (one for each operation).

CONCESSIONAIRES may submit multiple proposals in response to this RFP. Each proposal must include all required documents.

This RFP will enable the Community Services & Parks Department to evaluate a list of candidates who meet the qualifications and have the experience to manage the concession as set forth in this RFP.

B. Assumptions/Definitions

The following assumptions and definitions were used in preparing this RFP, and should be adopted by the CONCESSIONAIRE:

- The term *RFP* refers to this Request for Proposals, its attachments, and Addenda.
- The term *Proposer* refers to the CONCESSIONAIRE.

- The term *Proposal* refers to the *materials submitted* by the CONCESSIONAIRE in response to this RFP.
- The term *gross receipts* refers to all money or the equivalent of money (e.g., anything of value) that CONCESSIONAIRE receives or derives – without any deductions, except for a deduction for California imposed sales or excise taxes.
- The term *net profit* refers to all gross receipts less all documented reasonable costs, fees, and expenses that CONCESSIONAIRE pays or incurs under the Concession.
- Responding proposals will be based on the business needs outlined in this RFP and on technical and operational trends in municipal recreational facilities.
- This RFP is based on the best available information. Information not in this document, and not said to be forthcoming, should be assumed to be unavailable.
- Departure from the standards outlined in this RFP must be communicated via written notice to the CITY.

C. Scope of Work

TERM

The initial term of the Concession is for a period of five (5) years:

- Glorietta Tennis Court contract will begin on January 1, 2015, and end on December 31, 2019.
- Fremont Tennis Court contract will start at the conclusion of the installation of new lights and resurfacing. This tennis court contract is *estimated* to begin on April 1, 2015 or on a date after it, and is *estimated* to end on March 31, 2019, or on a date after it.

In addition, the CITY will have the option of renewing the contract on a year-to-year basis, for up to five (5) additional years. Exercise of the renewal option is at the sole discretion of the Director of Community Services and Parks and requires the City Manager's written approval. Upon renewal, the contract is subject to new or additional terms and conditions.

HOURS OF OPERATION

The CONCESSIONAIRE must maintain hours of operation during “peak usage” hours from 8:00 AM to 10:00 AM and 3:00 PM to 8:00 PM at the minimum. CONCESSIONAIRE may extend these hours as early as 7:00 AM and as late as 10:00 PM daily. Hours of operation shall be as set forth in **Exhibit VI, Proposal Forms, page 37**, and shall be posted in a visible location at the facility(s). CONCESSIONAIRE or staff shall be present at the location during all posted hours of operation, and facility shall be locked when CONCESSIONAIRE or staff is not present.

RESPONSIBILITIES

a. OPERATIONS

CONCESSIONAIRE must:

- 1) Enforce all rules & regulations.
- 2) Regulate play and conduct of players.
- 3) Ensure that courts are being used for tennis instruction and play only, and are not being utilized for inappropriate activities including, but not limited to: soccer or basketball.
- 4) Keep facility open for designated number of hours and days, as assigned in the agreement or at the discretion of the City.
- 5) Provide instructors who are United States Professional Tennis Association (USPTA) certified for professionals, or are teaching directly under the supervision of a USPTA certified professional. If CONCESSIONAIRE wishes to instruct, CONCESSIONAIRE must also be a USPTA certified professional.
- 6) Work with CITY staff to fingerprint and submit the required information to the California/U.S. Department of Justice, at the CONCESSIONAIRE'S expense, as required by law for criminal background check clearance for all persons supervising or having authority over minors. No employees or instructors shall begin working at the facility until a Department of Justice background check has been completed and the person is cleared for working with minors.
- 7) Provide private and/or group lessons and instructions in tennis and all services customarily provided by a tennis professional either by CONCESSIONAIRE personally or by qualified employees of CONCESSIONAIRE.
- 8) Schedule tournaments and other tennis activities with special interest groups, private groups, tennis clubs and/or school interests to assure the best overall, well-rounded tennis program for the community while incorporating public play and use of facilities in the overall program.
- 9) Operate and maintain recreational and competitive tennis programs such as, but not limited to: singles and doubles times, recreation and competitive ladders, instructional clinics and academies, special events, etc.
- 10) Cooperate with CITY in granting CITY reasonable use of facility, at no charge, for Community Services & Parks Department sponsored programs, contract classes, tournaments, and special events.

- 11) Not assign or sublet operations without prior written approval from the Director of Community Services & Parks Department
- 12) Manage and operate the Tennis Concession in a manner intended to ensure that no persons with disabilities are excluded from CONCESSIONAIRE'S programs and services on the basis of their disabilities.
- 13) Make every effort to provide reasonable accommodations to persons with disabilities, including the provisions of auxiliary aids and services to ensure equally effective communication and participation.
- 14) Establish and maintain necessary telephone services including a voicemail/answering machine and internet service and link to CITY's Community Services & Parks Department's website to provide adequate customer service to interested patrons.

b. MAINTENANCE

CONCESSIONAIRE must:

- 1) Maintain tennis courts, buildings and appurtenances in a safe, clean, sanitary, orderly, and attractive condition on a daily basis.
- 2) Wash the tennis courts on a weekly basis and as needed within water conservation guidelines determined by the CITY.
- 3) Dry-broom/sweep courts once a month and as needed.
- 4) Blow off tennis courts as needed and within the noise ordinance guidelines as set by the City of Glendale.
- 5) Wet-mop sticky spills or health hazards on the court.
- 6) Maintain all court lighting, including replacing/repairing lamps, bulbs, electrical ballasts and lens covers. CONCESSIONAIRE may elect to have CITY perform the work and reimburse CITY for services rendered.
- 7) Replace/repair court nets.
- 8) Comply with all appropriate water and power conservation methods.
- 9) Collect trash and place it in a bin adjacent to maintenance yard, on a daily basis.
- 10) Notify the CITY within 24 hours of maintenance needs that are the CITY'S responsibility.

- 11) Clean, service, supply, and maintain restrooms for tennis customers at Glorietta Tennis Courts, including, but not limited to: providing toilet paper and paper towels; and cleaning sinks, floors, toilets and walls.

CITY will be responsible for:

- 1) Electrical service wiring, mechanical, and plumbing (including restroom).
- 2) Fence repair/replacement.
- 3) Tree trimming that affects safety and safe play on courts.
- 4) Landscape maintenance of the park area adjacent to the courts.
- 5) Repair/replacement of benches inside tennis courts.
- 6) Repair of court surfaces in the event of a safety concern.

c. FINANCIAL OBLIGATIONS

CONCESSIONAIRE must:

- 1) Pay CITY the proposed monthly payment schedule, as well as the contracted percentage figure assigned to net profits above the proposed minimum monthly payments, as set forth in the Financial Projections and Planning in **Exhibit VI Proposal Forms, page 25**.
- 2) Pay all taxes, license fees, and related business expenses.
- 3) Furnish and pay for all costs relative to the safe operation and maintenance of facility and grounds including, but not limited to: purchasing, maintaining, and replacing equipment such as tennis racquets and balls, cleaning the courts, replacing nets, and changing light bulbs.
- 4) Operate and manage the tennis courts in a manner calculated to enhance revenue flow to the CITY and in a manner that will provide quality service for public and private use.
- 5) Set facility rental rates and tournament participation rates based on prevailing rates for other public and private facilities in the Los Angeles/Glendale area, determined by CONCESSIONAIRE and approved by the CITY. A sample list of fees for tennis court usage in various southern California cities is provided as **Exhibit IV, page 24** in this RFP. Fees for services shall be as set forth in **Exhibit VI Proposal Forms, page 37**. An example of court rental participation and gross rental sales at an eight (8) court facility is attached as **Exhibit III Example of Actual Reported Revenue, page 23**.

- 6) Maintain accurate cash receipt records, submit a monthly statement of gross receipts and pay fees to CITY, using software and forms approved by CITY, and providing back-up documentation upon CITY's request.
- 7) Maintain a roster of reservation of all tennis patrons, including but not limited to: name, age and city of residence. Use of a reservation/registration program such as Activenet or other online software is preferred.
- 8) Provide a copy of the daily reservation log or financial report summarizing all financial transactions related to the rental/use of the courts to CITY at the end of each month. Use of a reservation/registration program such as Activenet or other online software is preferred.

STANDARDS, LAWS AND REGULATIONS

All work and services that CONCESSIONAIRE performs must comply with all applicable standards, laws, and regulations, including safety and accident reporting requirements.

D. City's Representatives

The CITY project manager in charge of this project is Gabrielle Goglia, Community Services Supervisor. The executive in charge is Jess Duran, Director of the Community Services & Parks Department.

E. Minimum Requirements

Any suitably qualified tennis professional and/or company is eligible to apply, but the individual or firm must meet the following requirements:

- Three (3) years minimum experience operating a tennis reservation system.

Employees of the City of Glendale and their families are not eligible to apply.

II. RFP Process

A. Schedule of Events

The following events will take place in this project (see further explanations, below):

Event	Responsibility	Date(s)
RFP Distribution	CITY	July 7, 2014
Last Day to Object to RFP or Evaluation Process	Proposer	August 8, 2014
Last Day to Submit Interim Questions	Proposer	August 15, 2014
Mandatory Concessionaire Conference	CITY	August 20, 2014
RFP DEADLINE - RFP Responses Due	Proposer	August 29, 2014

CITY opens Proposals (non-public setting)	CITY	September 2, 2014
Candidate interviews	CITY	Beginning September 15, 2014
Final candidate announced	CITY	November 10, 2014
Contract Award (City Council approval)	CITY	November 18, 2014
Concession operation transition	Current Vendor moving out of site	November 24 – December 31, 2014
CONCESSIONAIRE contract start date at Glorietta Park (if CITY approves CONCESSIONAIRE's insurance)	Proposer who is awarded contract at Glorietta	January 1, 2015
Expected date of commencement of Glorietta Park concession operation	Proposer who is awarded contract at Glorietta	January 2, 2015
Anticipated CONCESSIONAIRE contract start date at Fremont Park (if CITY approves CONCESSIONAIRE's insurance)	Proposer who is awarded contract at Fremont	Anticipated April 1, 2015
Anticipated date of commencement of Fremont Park concession operation	Proposer who is awarded contract at Fremont	Anticipated April 1, 2015

B. RFP Distribution

Prospective CONCESSIONAIRES may receive this RFP by mail, e-mail, in person or online at <http://www.glendaleca.gov/government/departments/community-services-parks/request-for-proposals.2492>. Distribution of the RFP in no way represents City of Glendale's acceptance of a CONCESSIONAIRE'S qualifications, reputation, or ability to perform the work or services.

C. Mandatory Concessionaire Conference

A CONCESSIONAIRE Conference will be held on **August 20, 2014 at the times and locations listed below. Attendance at these conferences is mandatory. If a CONCESSIONAIRE is unable to attend a representative must be present. Failure to do so may result in rejection of a Proposal.** Attendees or their representatives will be required to sign-in at the conferences. The conferences will take place at the facility the prospective CONCESSIONAIRE is bidding on:

- Fremont Park - 600 West Hahn Avenue Glendale, 91203 – August 20, 2014 at 9:00 am.
- Glorietta Park - 2801 N. Verdugo Road Glendale, 91208 – August 20, 2014 at 11:00 am.

The purpose of these conferences is to ensure that Proposers have adequate information to respond fully and comprehensively to the CITY's requirements. During the conference, CITY staff will discuss with prospective Proposers the work to be performed and answer questions arising from the Proposer's initial review of this RFP. The Proposer should have reviewed the RFP thoroughly prior to the conference and should be familiar with its content, as well as CITY's functional and technical requirements. Proposers are highly encouraged to visit the park facility prior to attending the conference. Proposers may e-mail questions to Gabrielle Goglia – ggoglia@ci.glendale.ca.us prior to the conference. A copy of all questions and respective answers will be provided to all Proposers at the conferences.

D. Proposal Deadline and Proposal Submission

The CITY must receive the Proposal **before 5:00 p.m. on August 29, 2014.** ***A Proposal received after this date and time may be considered non-responsive and the CITY will return the Proposal, unopened.***

A Proposal must be in writing, and must be delivered by mail or in person. ***Oral, telephonic, facsimile, telegraphic, or electronically transmitted Proposals are invalid and the CITY will not accept or consider them.***

Proposer must submit in a sealed, clearly labeled envelope (or box):

- Four (4) printed Proposal documents [one (1) original and three (3) copies of EXHIBITS V, VI (up to 3 different options), & VIII] for each submitted proposal.

The Proposal must be clearly marked “**CITY OF GLENDALE TENNIS CONCESSION PROPOSAL**” and addressed to:

City of Glendale
Community Services & Parks Department
Attention: Gabrielle Goglia
613 E. Broadway, Room 120
Glendale, CA 91206

E. Interim Inquiries and Responses; Interpretation or Correction of RFP

If a Proposer has any question about this RFP, the proposed contract, or the scope of work— or if a Proposer finds any error, inconsistency, or ambiguity in the RFP, or the proposed contract, or both— the Proposer must submit a written “Request for Clarification” before submitting its Proposal.

The Proposer must submit a Request for Clarification to: Gabrielle Goglia, via email at ggoglia@ci.glendale.ca.us. **The CITY must receive the Request for Clarification before 5:00 p.m. on August 15, 2014.**

If necessary, the CITY will make clarifications, interpretations, corrections, or changes to the RFP, or the proposed contract, or both, in writing by issuing Addenda, as described in Section II.F (below), only to Proposers who attend the Mandatory Concessionaire Conference. A Proposer must not rely upon, and the CITY is not bound by, purported clarifications, interpretations, corrections, or changes to the RFP and the proposed contract, that are made verbally or in a manner other than a written advisory from the CITY.

F. Addenda

The CITY will issue Addenda in writing only. The CITY will make reasonable efforts to deliver Addenda to all Proposers whom the CITY knows have received a complete set of the RFP and have provided a street address for receipt of Addenda. The CITY cannot guarantee that all Proposers will receive all Addenda.

Proposers may also inspect the Addenda at the Community Services and Parks Department, during its business hours, Monday – Thursday: 7:30 a.m. - 5:30 p.m., Friday: 8:00 a.m. - 5:00 p.m. This RFP is also on file there.

At any time before the “Proposal Deadline” (Section II.D of this RFP), the CITY may issue Addenda withdrawing the RFP or postponing the Proposal Deadline. However, if any Addenda results in a material change to this RFP, or the proposed contract, or both, the CITY will extend the Proposal Deadline by not less than seventy-two (72) hours.

The CITY will treat transmittal of Addenda to potential Proposers by *U.S. mail, fax, or e-mail* as sufficient notice of the changes made by the CITY.

III. General Requirements and Instructions

A. Examination of Documents and Facility

Before submitting an RFP Response, each CONCESSIONAIRE must:

- Make all necessary investigations, examination of these documents, and inspect selected areas that will affect the full performance of the proposal. Proposers are highly encouraged to visit each park facility (during the day and at night) before to submitting the Tennis Concessionaire Proposal Forms.
- Thoroughly examine the RFP. A thorough review of this RFP is critical to obtaining an in-depth understanding of the requirements of this Proposal.
- Study and carefully correlate CONCESSIONAIRE’s site observations, document review, and industry knowledge with the RFP.

B. Proposer’s Representations in the Response

By submitting a Proposal, a Proposer represents that:

- The RFP is sufficient in scope and detail to indicate and convey reasonable understanding of all requirements, terms, and conditions for performance of the work required in this project;

- The Proposer has exercised all necessary due diligence in making investigations and inquiries, examining documents, and inspecting CITY sites and facilities;
- The Proposer is fully familiar with— and has fully considered— all facts, conditions, circumstances, and matters that may affect, in any way, the Proposer's services or costs;
- The Proposal is an irrevocable offer for a period of at least ninety (90) calendar days following CITY's opening of all Proposals; and
- The Proposer is, and will be, in compliance with the RFP's requirements, terms, and conditions.

C. Withdrawal, Cancellation, or Modification of a Proposal

Before the Proposal Deadline, a Proposer may withdraw and then modify a Proposal, by giving written notice, signed by the Proposer. A withdrawal request must be addressed as follows and delivered to:

City of Glendale
Community Services & Parks Department
Attention: Gabrielle Goglia
613 E. Broadway, Suite 120
Glendale, CA 91206

For a withdrawal to become effective, the CITY must receive the Proposer's request for withdrawal before the Proposal Deadline. The CITY will not accept or consider a Proposer's verbal request for modification or withdrawal of a Proposal.

If a Proposer withdraws its Proposal, the withdrawal will not prejudice the Proposer's right to submit a new Proposal, if the new Proposal is submitted: (a) in accordance with the RFP's requirements, and (b) before the Proposal Deadline.

After the Proposal Deadline, a Proposer must not withdraw, cancel, or modify its Proposal for a period of at least ninety (90) calendar days following the Proposals' opening on September 2, 2014, subject to the exception described in the next paragraph below. The CITY may extend the 90 day period upon the CITY's written request and upon the affected Proposers' written approval.

The CITY may allow a Proposer to withdraw or cancel a Proposal after the opening of the Proposals, if the Proposer establishes, to the CITY's satisfaction, that all of the following circumstances exist:

- 1) The Proposer made a mistake in its Proposal;
- 2) Within five (5) days after the Proposal's opening, the CITY receives from the Proposer written notice of the mistake and the notice specifies in detail how the mistake occurred;
- 3) The mistake made the Proposal materially different from what the Proposer had intended it to be; and
- 4) The mistake was made in filling out the Proposal and was not due to error in judgment, or carelessness in reading the RFP or the proposed contract.

D. Proposal Preparation Expenses

Expenses for developing the RFP Proposal are entirely the responsibility of the CONCESSIONAIRE and are not chargeable to CITY in any manner. CITY is not liable for any pre-contractual expenses, which are defined as expenses incurred by CONCESSIONAIRE in:

- Preparing its Proposal in response to this RFP.
- Negotiating with CITY any matter related to the Proposal.
- Any other expense incurred by CONCESSIONAIRE prior to the date of award of the contract for this RFP.

E. Insurance

Specific insurance requirements are noted in **EXHIBIT VII – page 42 (Insurance Requirements)** and will need to be in place before CONCESSIONAIRE begins operating the tennis concession. CITY will require certificates of insurance and additional insured endorsements when CONCESSIONAIRE submits a signed contract to the CITY. **The Proposer must submit to its insurance company or insurance agent the Insurance Requirements in this RFP. The insurance company's underwriter or agent must complete the Insurance Requirements Affidavit (EXHIBIT VIII – page 52) which states that the insurer's underwriter or agent will furnish the CITY with the required insurance documents within fourteen (14) days after the Proposer's having been notified of the contract's award. The Proposer must submit this form with the Proposal. CITY may reject any Proposal made without this affidavit, or made with an incomplete affidavit form.**

F. Proposer's Indemnification of City

At its expense, Proposer agrees to indemnify, defend, and hold harmless the CITY and its officers, agents, employees, and representatives from and against any and all liability, suits, actions, proceedings, judgments, claims, demands, liens, losses, damages, costs, and expenses (including attorneys' fees, litigation, arbitration, mediation, appeal expenses) if a dispute, lawsuit, or other proceeding arises out of any one or more of the following: (1) Proposer's submitting the Proposal, (2) CITY's accepting Proposer's Proposal, or (3) CITY's awarding a contract to Proposer in compliance with this RFP, or state, federal, or local laws.

IV. Proposal Content and Format

Proposals must be submitted on the Tennis Concession Proposer Information and Proposal Forms which are attached as **EXHIBITS V** and **VI**, respectively. Proposals should be brief and concise, furnishing pertinent and relevant information rather than merely providing promotional facts or materials.

The Proposer must respond to the Proposal Forms' questions with all applicable information, in order for the CITY to consider the Proposal as "responsive."

If a Proposer fails to provide the information that the forms require, fails to return all of the forms' pages, or fails to submit any required attachments, the CITY may treat the Proposal as "non-responsive."

The Proposer must place initials next to all interlineations, alterations, and erasures on the Proposal Forms.

The Proposer must not modify or qualify the Proposal Forms in any manner. Unauthorized conditions, exemptions, limitations, or provisions attached to a Proposal will render it informal and may cause its rejection.

A. Proposal Content

The Proposal should establish that the CONCESSIONAIRE possesses the competence, experience, expertise, equipment, personnel, financial wherewithal, and other resources necessary not only to perform the concession services in a professional, dependable, and competent manner, but also to ensure quality service and to provide utmost customer satisfaction.

B. Identifying Proprietary Information; Public Records Act

A Proposer must identify and list all copyrighted material, trade secrets, or other proprietary information ("protectable documents") that the Proposer included in its Proposal which Proposer believes should be exempt from disclosure under California's Public Records Act, Government Code Section 6250, et seq.

By listing the documents, the Proposer agrees to indemnify, defend, and hold harmless the CITY and its officers, agents, employees, and representatives from and against any action, claim, lawsuit, or proceeding, including costs and expenses, arising out of or connected with the CITY's refusal to disclose the protectable documents to any party making a request for those items.

The CITY will treat any Proposer, who fails to identify documents that the Proposer believes should be exempt from disclosure, as having waived its right to an exemption from disclosure, as the Public Records Act provides.

All Proposals and other material submitted become the property of the CITY and may be returned only at the CITY's option. The CITY reserves the right to use any ideas presented in any response to the RFP. Selection or rejection of the Proposal does not affect this right.

C. Proposal Signature(s)

The person or persons legally authorized to bind the Proposer to the RFP must sign the Proposal in ink. The individuals signing the Proposal must represent that they are authorized to bind the Proposer's legal entity.

- A corporation must execute the Proposal by its duly authorized officer(s) in accordance with its corporate bylaws.
- A partnership must execute the Proposal by all of its partners. After each signature, each partner must list a residential address or the firm's address, either of which must include the state, zip code, and telephone number.
- If the Proposer is a joint venture consisting of a combination of any of the above entities, each entity in the joint venture must sign the Proposal.
- An individual signing a Proposal as an agent of another or others must attach to the Proposal evidence of that person's legal authority to sign on behalf of another or others.

V. Method of Selection

All proposals received on time will be opened privately on September 2, 2014. Proposals will first be reviewed to ensure compliance with the terms of this RFP. Non-compliant or non-responsive proposals may be rejected. The CITY may elect to waive any informality in a proposal if the sum and substance of the proposal is present. The CITY will then evaluate the proposals in accordance with the criteria listed below. Interviews of the qualified candidates will begin on September 15 and extend through October 31, 2014. The City may conduct up to three (3) separate interviews of candidates. These are mandatory interviews.

The City will maintain a "Register of Proposals" that lists the Proposer's name, the date, and the time that the City had received the Proposal. The Proposals will be open to public inspection after the City has recommended award of the Contracts.

A. Basis for Award and Evaluation Criteria

Each Proposer's submission will be reviewed, evaluated, and ranked on the criteria listed below.

- 1) **Adherence to minimum requirements (Pass/Fail).** A proposal must adhere to the minimum requirements outlined in this RFP. Failure to comply may eliminate a proposal from further consideration.
- 2) **Adherence to format (Pass/Fail).** A proposal must adhere to the format outlined in the Proposal Forms. Failure to adhere to this format may eliminate a proposal from further consideration.
- 3) **Experience and qualifications (20%).** Evaluation of a Proposer's experience and capacity to perform the required services in the following:
 - a. Previous operation and implementation of tennis or other similar programs
 - b. Experience operating a concession in a government or school setting
 - c. Business awards or tennis industry achievements
 - d. Certifications in tennis industry
 - e. Training experience
 - f. Business management experience
 - g. Evidence of untimely and unsatisfactory performance on prior, similar work or services
- 4) **Proposed payment to the CITY (20%).** CITY will evaluate the cost benefit to the CITY based on the proposed payments over the term of the contract.
- 5) **Financial Stability (15%).** Evaluation of Proposer's financial resources and solvency such as a credit report or business tax return.

- 6) **Range of services (15%).** Evaluation of Proposer's ability to provide a well-rounded program in the following:
- a. Public rentals
 - b. Tennis instruction (private)
 - c. Tennis instruction (group)
 - d. Tennis Club
 - e. Ability to accommodate persons with disabilities and provide integrated programs/services, as opposed to segregated programs that exclude or tend to segregate persons with disabilities.
- 7) **Daily Operational Plan (15%).** CITY will evaluate the proposed schedule of operations including:
- a. Days / Hours of operation
 - b. Days / Hours of services provided
 - c. Staffing
 - d. Leadership at the site
 - e. Proposed hours of staff working at the site
 - f. Support capability and experience
 - g. Contingency plans for inclement weather
- 8) **Advertising and marketing (15%).** Evaluation of the marketing plan, and Proposer's ability to attract business to the tennis courts. Evaluation of proposed marketing tools, including:
- a. Social media
 - b. Printed press
 - c. Proposal to attract new customers
 - d. Proposal for customer retention

The CITY may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional information or evidence of qualifications to provide the work and services described in this RFP.

B. Selecting a Concessionaire

A panel, selected by the Director of the Community Services & Parks Department, will evaluate each RFP submission. The panel will select up to three (3) finalists per facility for interviews. A panel will interview the finalists, and then submit their recommendations to the Director, who will submit a recommendation to the City Council, which may select one or more Proposers.

The contract award will be based on a combination of factors that reflect the best candidate for completing the work and services, as determined by the CITY, including: the proposal evaluation criteria described on the previous pages; results of background and reference checks; results from interviews and presentation phase; and proposed revenue to the CITY.

The City Council must approve an award of a contract to the successful Proposer and no rights or obligations begin under an award until the approval is secured and a contract has been duly signed by all parties.

C. Form of Contract

Once selected, the successful Proposer must enter into a written Agreement with the CITY within fourteen (14) calendar days following Proposer's receiving the CITY's Notice of Intent to Award Contract.

Before any services can commence, the selected Concessionaire will be required to execute the Standard Form of Agreement, which is attached as **Exhibit IX, page 51**. To facilitate the project's smooth and timely implementation, Proposers responding to this RFP shall review all the terms and conditions of the Standard Form of Agreement including, but not limited to, provisions relating to insurance, indemnity, and termination.

The CITY's policy is that the Standard Form of Agreement be accepted as is. By submitting a Proposal to the CITY in response to this RFP, each Proposer is deemed to have provided its approval to the Standard Form of Agreement, accepting it without qualification. If a Proposer seeks limited modification of the Standard Form of Agreement, then in the Proposal a Proposer must identify the proposed changes.

However, changes or qualifications to the Standard Form of Agreement may be weighed in the evaluation of the Proposal and may cause rejection of the proposal as non-responsive, in CITY's determination.

D. City's Reservation of Rights

This RFP and the proposal evaluation process do not:

- Obligate the CITY to accept or select any Proposal;
- Constitute an agreement by the CITY that it will actually enter into any contract with any Proposer.

When it best serves the CITY's interests, the CITY may do any one or more of the following:

- Reject any Proposal or all Proposals at its sole discretion.
- Extend the deadline for accepting Proposals.

- Accelerate the pace of the RFP process if only one or a handful of Proposals are received.
- Waive any or all information, defects, irregularities, or informalities in a Proposal.
- Accept amendments to Proposals after the Proposal Deadline.
- Amend, revise, or change the RFP's evaluation or selection criteria.
- Cancel, withdraw, amend, revise, change, or negotiate the terms of this RFP, the proposed contract, or both.
- Reissue a Request for Proposals.
- Conduct oral interviews.
- Visit Proposer's facilities or business.
- Examine financial records of Proposer to the extent necessary to ensure financial stability.
- Make a partial award.
- Negotiate with one or more Proposers.
- Award contracts to one or more Proposers.
- Require a best and final offer from one or more Proposers.
- Provide its own services for tennis concessions, or contract directly— without an RFP or bids— for those services.

VI. Letter of Objection; Procedures

A Proposer, who believes that any part of this RFP is discriminatory against the Proposer or precludes the Proposer from being given reasonable consideration in the procurement process, must submit a letter, clearly stating the specific objections, the areas of concern, and a proposed method for resolving the objections. The Proposer, or the person who is duly authorized to represent the Proposer, must sign the correspondence. The CITY must receive the letter of objection **before 5:00 p.m. August 8, 2014.** The CITY will not consider any verbal objection. The letter of objection must be addressed as follows and delivered to:

City of Glendale
Community Services & Parks Department
Attention: Gabrielle Goglia
613 E. Broadway, Room 120
Glendale, CA 91206

Upon the CITY's timely receipt of the objection letter, the CITY will review the Proposer's contention(s). If the CITY decides that the RFP— whether in whole or in part— needs revision, the CITY will prepare Addenda, as described in Section II.F of this RFP.

EXHIBIT I

Aerial of Fremont Park



*Fremont Park Tennis Courts, located at 600 W. Hahn, Glendale, 91203
Consists of:*

- 8 Lighted tennis courts
- Tennis Office
- Accessible Parking Lot

Map of Fremont Park Location

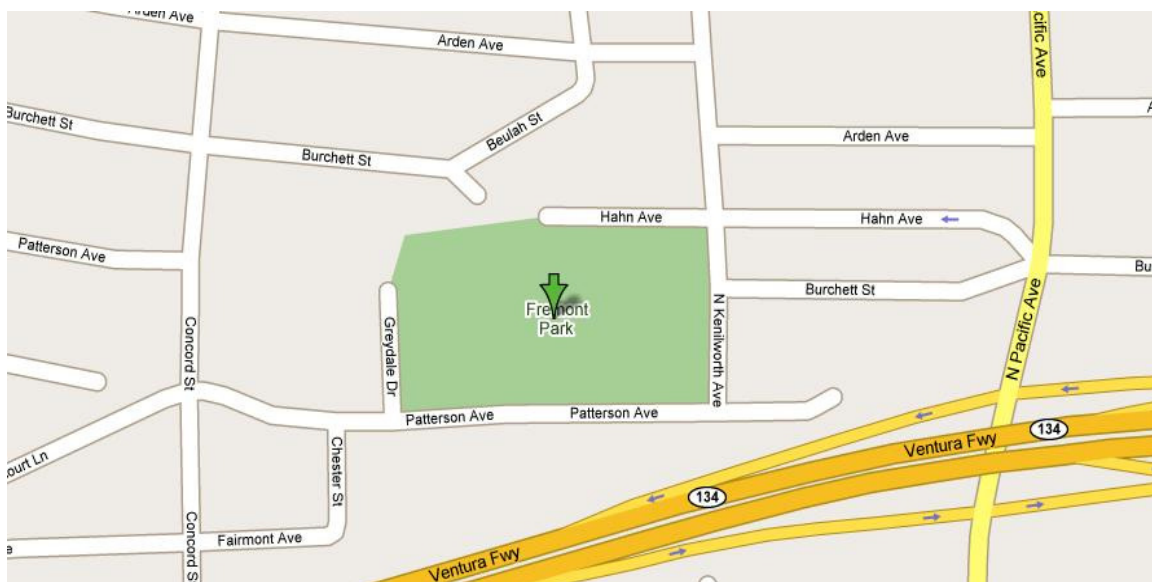
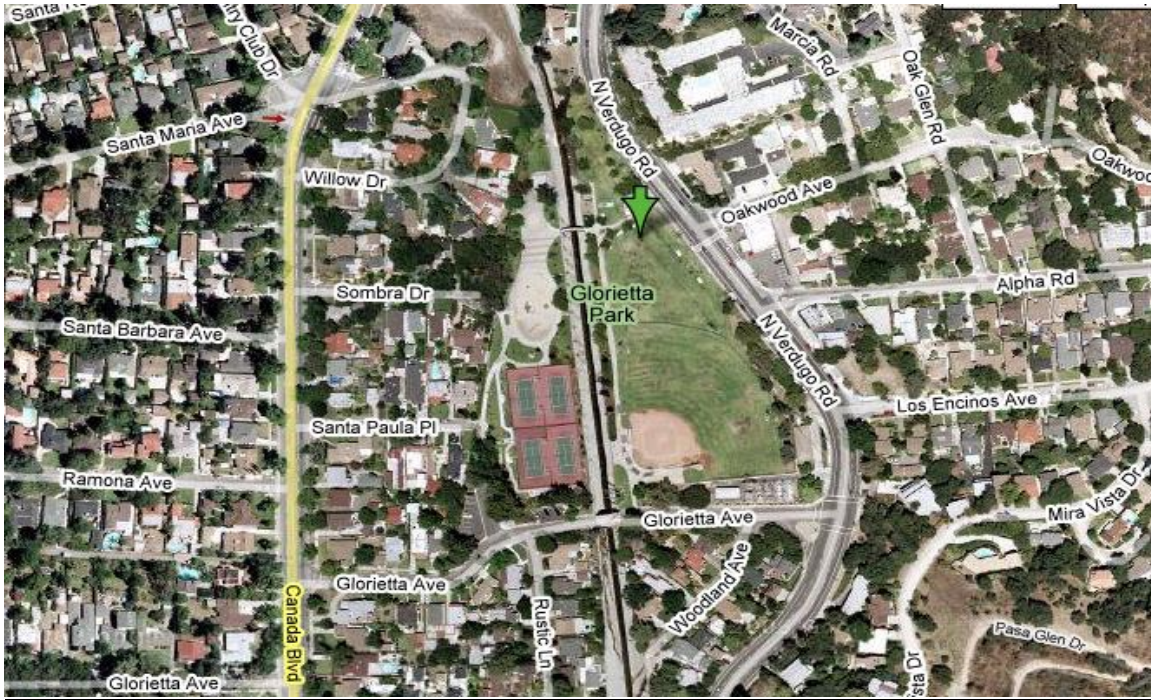


EXHIBIT II

Aerial of Glorietta Park



*Glorietta Tennis Courts, located at 2801 N. Verdugo Rd., Glendale, 91208
Consists of:*

- 4 lighted tennis courts
- Tennis office
- Parking is limited

Map of Glorietta Park Location

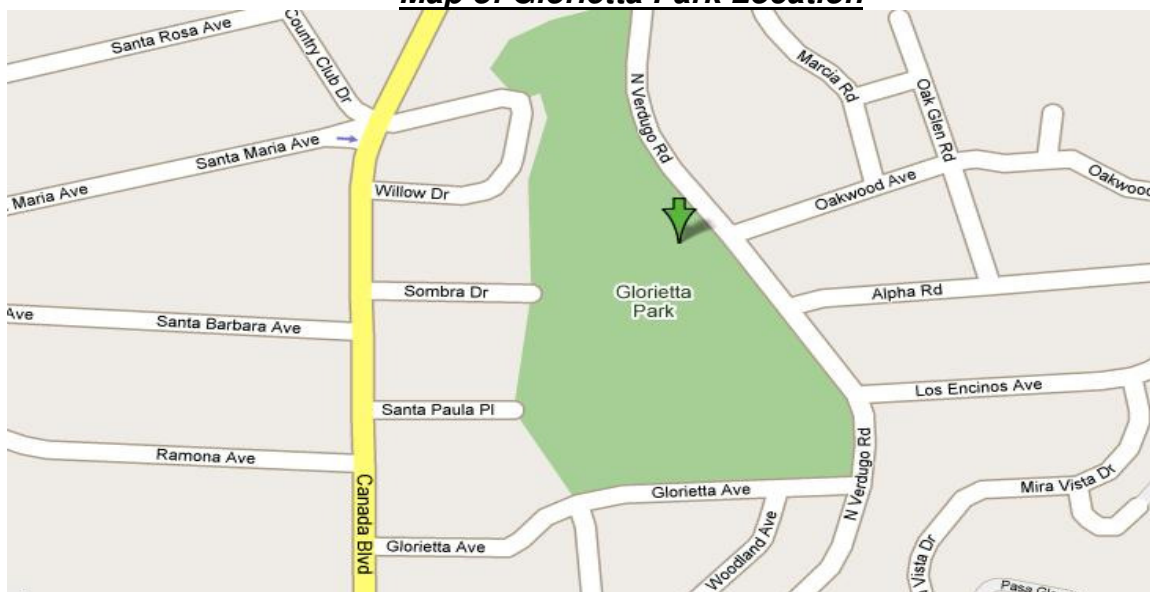


EXHIBIT III

8 Court Facility – Examples of Actual Reported Revenue

Month	Day Renters (\$4.00/hour)	Night Renters (\$5.50/hour)	Reported Revenue
January	56	604	\$3,546.00
February	55	649	\$3,789.00
March	53	724	\$4,176.00
April	73	789	\$4,641.00
May	59	790	\$4,581.00
June	52	802	\$4,619.00
July	59	809	\$4,685.00
August	70	771	\$4,520.00
September	70	759	\$4,454.00
October	76	812	\$4,770.00
November	68	617	\$3,665.00
December	42	530	\$3,063.00

Note that this does not reflect the revenue that may be generated from lessons, camps, and tournaments.

In addition, these reported revenues may reflect rental of courts for lessons taught by private instructors, as well as individual play. This new contract will require the concessionaire to report revenue collected for both lessons and individuals.

This example of collected revenue reflects 8 courts at Fremont; please keep in mind that Glorietta has only 4 courts.

EXHIBIT IV

Sample Fees for Tennis Court Usage in Various Southern California Cities

(Updated November 15, 2013)

Current Glendale Fees (Glorietta & Fremont)	Operated by private vendors <ul style="list-style-type: none">• Day Rate \$4 per court / per hour• Evening/Wknd Rate \$5.50 per court / per hour• Instruction \$7 per court / per hour
Glendale/Scholl Canyon Golf & Tennis	Operated by private vendor <ul style="list-style-type: none">• Day Rate \$5 per court / per hour• Evening/Wknd Rate \$10 per hour• Permits available for Tennis Instructors and Tennis Clubs
Burbank	Operated by a private vendor <ul style="list-style-type: none">• Residents \$8-\$10 per court / per hour• Non-residents \$12-\$14 per court / per hour
Santa Monica	Operated by the City of Santa Monica <ul style="list-style-type: none">• Residents \$3.25 per person / per hour• Non-residents \$4 per person / per hour• Youth Pass \$20 / 3 months (court fees waived)• Adult Pass \$60 / 3 months (court fees waived)
Pasadena (Rose Bowl)	Operated by a private vendor Courts are scheduled for classes during prime-time <ul style="list-style-type: none">• Courts are available for free use when not scheduled for classes
Los Angeles (Poinsettia)	Operated by a private vendor <ul style="list-style-type: none">• Day Rate \$5 per court / per hour• Evening/Wknd Rate \$8 per court / per hour
Los Angeles (Sherman Oaks)	Operated by the City of Los Angeles <ul style="list-style-type: none">• \$8 per court / per hour• \$10 per hour for tournaments
Fountain Valley	Operated by a private vendor <ul style="list-style-type: none">• Days \$7 per court / per hour• Nights \$10 per court / hour (after dark)
Costa Mesa	Operated by a private vendor <ul style="list-style-type: none">• Weekdays \$6 per court / per hour• Evening/Wknd Rate \$10 per court / per hour

**These sample fees were collected from the internet, and may contain errors. This sample list should be used as a guideline for setting rates in the proposal only.*

EXHIBIT V

TENNIS CONCESSION PROPOSER INFORMATION

Use the following forms to provide information necessary to complete the Request for Proposals. Proposers are advised that statements made in the Proposal Information forms may be incorporated into the Agreement. All questions must be answered concisely and completely.

Basic Information

Proposer's Name: _____

Firm's Name (if contract will be with a Firm): _____

Address: _____

City: _____ State: _____ Zip Code: _____

Principal Telephone: _____ Fax: _____

Contact Person Name: _____ Title: _____

Telephone: _____ E-Mail: _____

Proposer's Social Security Number or Tax ID Number: _____

The City of Glendale may: (1) request credit, criminal, and investigative reports about you and your firm, and (2) contact the references, government entities, and other persons listed in this Proposal. The City of Glendale will use this information to evaluate your firm's financial resources, responsibility, and integrity with respect to this Proposal, an award of the contract, or any contract renewal. The City of Glendale will treat any information that it obtains now or later as confidential.

Do you and your firm authorize the City of Glendale to obtain credit, criminal, and investigative reports about you and your firm:

_____ **Yes**

_____ **No**

Do you and your firm authorize the references, government entities, and other persons listed in this Proposal to release information about you and your firm to the City of Glendale?

_____ **Yes**

_____ **No**

TO THE CITY OF GLENDALE, CALIFORNIA:

In response to the Request for Proposals ("RFP") by the City of Glendale ("CITY"), the undersigned person or entity ("Proposer") now submits this Proposal ("Proposal"), with the accompanying forms and attachments.

Under the penalty of perjury, Proposer certifies that:

- A. This Proposal is genuine, is not a sham or collusive, and is not made in the interest of, or on behalf of, any person, partnership, corporation, firm, organization, or another entity not named or disclosed in the Proposal;
- B. Proposer did not, directly or indirectly, induce, agree, or solicit anyone else to submit a false or sham Proposal, to refrain from proposing, to withdraw a Proposal, or to attempt to induce an action prejudicial to CITY's interests;
- C. Proposer has not sought by collusion, in any manner, to secure for Proposer any advantage over other Proposers;
- D. All facts and statements in the Proposal are completely true, accurate, and correct.

PROPOSER SIGNATURE: _____ DATE: _____

PROPOSER PRINTED NAME: _____

PROPOSER TITLE: _____

GENERAL STATEMENT OF QUALIFICATIONS

(Attach additional pages if necessary, and title each page "General Statement of Qualifications, Page 27A")

How many years has Proposer previously operated a tennis reservation system: _____

Previous Experience

1) Name of operation: _____

Dates Proposer worked: _____

Role in operation: _____

Supervisor's Name: _____

Briefly describe how reservations were taken in this operation:

2) Name of operation: _____

Dates Proposer worked: _____

Role in operation: _____

Supervisor's Name: _____

Briefly describe how reservations were taken in this operation:

3) Name of operation: _____

Dates Proposer worked: _____

Role in operation: _____

Supervisor's Name: _____

Briefly describe how reservations were taken in this operation:

Is Proposer a member of the USPTA professional organization? _____

List any additional relevant certifications: _____

List any industry achievements or awards that the Proposer may have gained:

Briefly describe the Proposer's experience in working with Tennis Professionals:

Briefly describe the Proposer's experience as related to operating a tennis reservation system:

Briefly describe the Proposer's safety record for other sites that Proposer has operated and indicate whether Proposer has ever developed a written safety plan:

PROPOSER'S BACKGROUND

Answer the following background questions, and provide an indication of financial resources and solvency such as a credit score report or business tax return. Attach supporting documents and title them "Background, page 29A."

Have you ever been convicted of a Criminal Offense (misdemeanor or felony) other than a minor traffic violation?

☐ Yes

☐ No

If yes, provide information pertaining to ALL convictions, unless sealed or expunged. Do NOT list arrests that did not result in a conviction. If you have been arrested and a determination is pending, also note the information below.

_____	_____	_____
Date of Conviction	Code Section Violated (Number & Title)	Felony or Misdemeanor

Sentencing Information: (length of jail sentence, time serviced, monetary fine, terms of parole and/or probation)		

Description of Offense and Additional Remarks		

_____	_____	_____
Date of Conviction	Code Section Violated (Number & Title)	Felony or Misdemeanor

Sentencing Information: (length of jail sentence, time serviced, monetary fine, terms of parole and/or probation)		

Description of Offense and Additional Remarks		

_____	_____	_____
Date of Conviction	Code Section Violated (Number & Title)	Felony or Misdemeanor

Sentencing Information: (length of jail sentence, time serviced, monetary fine, terms of parole and/or probation)		

Description of Offense and Additional Remarks		

Signature

Date

REFERENCES

Provide a minimum of three references as to the Proposer's experience qualifications (Two of the references MUST be of most recent Concessionaire contracts held).

Reference #1

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-Mail: _____

Starting / Ending Date of Concession Operation: _____ / _____

May we contact this reference? Yes _____ No _____

If no, explain as to why? _____

Reference #2

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-Mail: _____

Starting / Ending Date of Concession Operation: _____ / _____

May we contact this reference? Yes _____ No _____

If no, explain as to why? _____

Reference #3

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-Mail: _____

Starting / Ending Date of Concession Operation: _____ / _____

May we contact this reference? Yes _____ No _____

If no, explain as to why? _____

Reference #4

Contact Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ E-Mail: _____

Starting / Ending Date of Concession Operation: _____ / _____

May we contact this reference? Yes _____ No _____

If no, explain as to why? _____

OPERATIONAL PLAN

List of Services

Complete the following sections. Attach any additional pages needed, and title them "List of Services, Page 32A."

Describe the Group Lessons Proposer intends to offer, including but not limited to: general class descriptions, various levels of classes to be offered, classes per week, number of students in class, duration of a session, and whether CONCESSIONAIRE or staff will teach the lessons: _____

Describe the Private Lessons Proposer intends to offer, including but not limited to: general class descriptions, classes per week, and whether CONCESSIONAIRE or staff will teach the lessons: _____

Describe the reservation system Proposer intends to use for court rentals, including but not limited to: number of courts available for reservation, number of courts available for drop by customers, hours of operation for court rentals, and whether CONCESSIONAIRE or staff will supervise court rentals: _____

Describe any camps Proposer intends to offer, including but not limited to: ages for camp participants, months camps will be offered, duration of camps, general camp description, and whether CONCESSIONAIRE or staff will operate camps: _____

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Staff Information

List each employee/independent contractor/volunteer who will be at the facility (Attach additional sheets if necessary, and title them "Staff Information, Page 34A")

STAFF #1

Check one: **Employee** **Independent Contractor** **Volunteer**

Name: _____ Title/Role: _____

Salary: _____ Proposed Hours: _____

Relationship with any schools (if applicable): _____

Professional Background/ Professional Affiliations: _____

List of Professional Certifications/Licenses Held: _____

Professional and Civic Involvement: _____

Honors and Awards: _____

STAFF #2

Check one: **Employee** **Independent Contractor** **Volunteer**

Name: _____ Title/Role: _____

Salary: _____ Proposed Hours: _____

Relationship with any schools (if applicable): _____

Professional Background/ Professional Affiliations: _____

List of Professional Certifications/Licenses Held: _____

Professional and Civic Involvement: _____

Honors and Awards: _____

MARKETING AND ADVERTISING

Discuss Proposer's marketing and advertising plan to attract youth, adults, tennis groups and clubs, and tennis instructors. Attach additional pages as necessary and title them "Marketing and Advertising, Page 36A."

Which of the following advertising methods does the Proposer intend to use (check all that may apply), and the frequency which Proposer intends to utilize these methods:

_____ Banners _____ frequency _____ Flyers _____ frequency
 _____ Newspaper Ads _____ frequency _____ Twitter _____ frequency
 _____ Facebook _____ frequency
 _____ Other forms (list): _____

Provide a summary of Proposer's plan to advertise operations, including obtaining new customers and customer retention: _____

[illegible]

EXHIBIT VI

TENNIS CONCESSION PROPOSAL

Use the following forms to provide information necessary to complete the Request for Proposals. Proposers are advised that statements made in the Proposal Information forms may be incorporated into the Agreement. All questions must be answered concisely and completely.

This proposal is for the following operation (**Check only one (1) box below.** *If submitting a proposal for multiple operations, you **MUST** submit a separate packet of Exhibit VI Forms for **EACH** operation*):

- ☐ Fremont Park Tennis Court
- ☐ Glorietta Park Tennis Courts
- ☐ BOTH Fremont & Glorietta Tennis Courts

All pages of Exhibit VI must be for the same operation proposal. The box at the top of each page **MUST** match the box checked above.

You may submit up to three (3) different proposals with this application (one for each of the above options). Each proposal must include all pages of Exhibit VI (pages 36-40).

PROPOSED SCHEDULE OF OPERATIONS

Check only one (1) box below:

- ☐ Fremont Park ☐ Glorietta Park ☐ BOTH Fremont & Glorietta Parks

For the above checked operation, provide a sample of a weekly schedule of operations (Monday through Sunday), including but not limited to the following: a schedule of maintenance, court use (rentals, lessons, special events, etc.), and staffing schedule. Include the hours that the CONCESSIONAIRE will be on site, and when staff will be working. A separate form may be submitted in addition to, or in lieu of this form, titled "Proposed Schedule of Operations, Page 38A."

	7a-8a	8a-9a	9a-10a	10a-11a	11a-12p	12p-1p	1p-2p	2p-3p	3p-4p	4p-5p	5p-6p	6p-7p	7p-8p
Example Court	Maint. (Staff)	Rental Time (Staff)	Adult Group Lessons (Staff Instructor)	Youth Group Lessons (Staff Instructor)	Rental Time (Concess.)	Rental Time (Concess.)	Rental Time (Concess.)	Private Lessons (Concess.)	Youth Camp (Concess. & Staff)	Youth Camp (Concess. & Staff)	Youth Camp (Concess. & Staff)	Rental Time (Staff)	Rental Time (Staff)
Court 1													
Court 2													
Court 3													
Court 4													
Court 5													
Court 6													
Court 7													
Court 8													

FINANCIAL PROJECTIONS & PLANNING

Proposed Fees

Check only one (1) box below:

☐ Fremont Park ☐ Glorietta Park ☐ BOTH Fremont & Glorietta Parks

For the above checked operation, provide a list of proposed fees to be charged (use additional sheets if necessary, and title them "Proposed Fees, Page 39A"):

Weekdays

From: _____ a.m. To: _____ p.m.
Rate: \$ _____ per court / per hour

Evenings

From: _____ p.m. To: _____ p.m.
Rate: \$ _____ per court / per hour

Weekends

From: _____ a.m. To: _____ p.m.
Rate: \$ _____ per court / per hour

Private tennis instruction (not conducted by CONCESSIONAIRE)
Rate: \$ _____

Group Tennis Lessons (conducted by CONCESSIONAIRE or staff)
Rate: \$ _____ per student / per session
of Classes: _____ per session

Individual Tennis Lessons (conducted by CONCESSIONAIRE or staff)
Rate: \$ _____ per hour

Tennis Club
Rate: \$ _____ per session
of Meetings: _____ per session

List any additional fees and unit of measurement for proposed activities:

Activity: _____
Rate: \$ _____ per session
of Meetings: _____ per session

Activity: _____
Rate: \$ _____ per session
of Meetings: _____ per session

Payment

Check only one (1) box below:

☐

Fremont Park

☐

Glorietta Park

☐

BOTH Fremont & Glorietta Parks

For the above checked operation, fill in the amount of proposed payment to the CITY as consideration to your right and privilege to operate a Tennis Reservation System.

In **PART I** (below) state the proposed minimum monthly payment for the initial term (2015-2019).

In **PART II** (below), state the proposed minimum percentage assigned to net profits (calculated annually) for the initial term (2015-2019).

In **PART III** (next page), complete a Pro Forma Profit and Loss projection for the first five-year term, including projected revenues, variable costs, fixed costs, interest and taxes, proposed rent to CITY, and net profits.

PART I:

<u>MONTH</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
January	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
February	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
March	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
April	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
May	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
June	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
July	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
August	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
September	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
October	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
November	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
December	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
Annual Payments:	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

PART II:

Proposed minimum percentage figure assigned to net profits, for the initial term (2015-2019):

_____%.

PART III

Pro Forma Analysis

Check only one (1) box below:

☐

Fremont Park

☐

Glorietta Park

☐

BOTH Fremont & Glorietta Parks

For the above checked operation, complete a 5 year financial analysis.

5 YEAR PRO FORMA PROFIT/LOSS ANALYSIS

5 YEAR PROJECTED FINANCIAL PLAN

PROPOSER'S NAME: _____

PROJECTED REVENUE		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
1	Rental Sales					
2	Lesson Sales					
3	Camp Sales					
4	Tournament Sales					
5	Miscellaneous Sales					
6	Total Gross sales (Add Lines 1 through 5)					
7	Less sales returns and allow- ances					
8	Net Sales (Line 6 minus Line 7)					
OPERATING EXPENSES (Year 1 should include start up costs)						
9	Salaries and wages					
10	Employee benefits					
11	Payroll taxes					
12	Insurance (costs related to Exhibit VII)					
13	Rent (Should match proposed annual pay- ments)					
14	Permits					
15	Advertising					
16	Utilities					
17	Depreciation & amortization					
18	Office supplies					
19	Postage					
20	Equipment maintenance & rental					
21	Interest					
22	Furniture & equipment					
23	Total Operating Expenses (Add Lines 9 through 22)					
24	Net Income Before Taxes (Line 8 minus Line 23)					
25	Taxes on income					
26	Net Income After Taxes (Line 24 minus Line 25)					
27	Extraordinary gain or loss					
28	Income tax on extraordinary gain					
29	PROJECTED NET PROFIT (LOSS) (Add Lines 26 & 27, minus Line 28)					
30	PERCENTAGE OF NET PROFIT _____ % (Owed to City, minimum 10%)					

EXHIBIT VII INSURANCE REQUIREMENTS

1.0 “WORKERS’ COMPENSATION” INSURANCE

- 1.1 At its own expense, CONTRACTOR shall obtain, pay for, and maintain— and shall require each of its Subcontractors to obtain and maintain— for the duration of this Agreement:
- (A) Complete Workers’ Compensation insurance, meeting or exceeding the coverages and amounts that California law requires; and
 - (B) Employer’s Liability insurance in an amount not less than:
 - (1) ONE MILLION DOLLARS (\$1,000,000) per accident for bodily injury or disease;
 - (2) ONE MILLION DOLLARS (\$1,000,000) per employee for bodily injury or disease; and
 - (3) ONE MILLION DOLLARS (\$1,000,000) policy limit.
- 1.2 CONTRACTOR shall provide CITY with a “***certificate of insurance***” and a subrogation endorsement, “***Waiver of Our Right to Recover From Others***”— on forms satisfactory to the City Attorney or City’s Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, this Agreement’s workers’ compensation insurance requirements.
- 1.3 CITY shall not be liable to CONTRACTOR’s personnel, or anyone CONTRACTOR directly or indirectly employs or uses, for a claim at law or in equity arising out of CONTRACTOR’s failure to comply with this Agreement’s workers’ compensation insurance requirements.

2.0 “COMMERCIAL GENERAL LIABILITY” OR “BUSINESSOWNERS LIABILITY” INSURANCE

- 2.1 At its own expense, CONTRACTOR shall obtain, pay for, and maintain— and shall require each of its Subcontractors to obtain and maintain— a “Commercial General Liability” or a “Businessowners Liability” insurance policy on an occurrence basis to fully protect CONTRACTOR and CITY from claims and suits for bodily injury, personal and advertising injury, property damage, and medical payments. The policy must add the City of Glendale and its officers, agents, employees, and representatives (collectively, “CITY AND ITS REPRESENTATIVES”) as additional insureds.

- 2.2 Coverage afforded to CITY AND ITS REPRESENTATIVES must be at least as broad as that afforded to CONTRACTOR. If CONTRACTOR has higher limits than the limits specified in these insurance requirements, or has additional broader coverage, or has both, the insurer shall make available the higher limits and broader coverage to CITY AND ITS REPRESENTATIVES. The insurance must be written for the limits of liability specified below:
- (A) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for bodily injury (including accidental death) to any one person;
 - (B) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for personal and advertising injury to any one person;
 - (C) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for property damage;
 - (D) ONE MILLION DOLLARS (\$1,000,000) per occurrence, or the full per occurrence limits of the policy— whichever limit is greater— for sexual abuse or molestation to any one person; and
 - (E) TWO MILLION DOLLARS (\$2,000,000) general aggregate limit, or the full aggregate limits of the policy— whichever limit is greater.
- 2.3 The liability insurance must include all major divisions of coverage and must cover:
- (A) Premises Operations (including Explosion, Collapse, and Underground ["X,C,U"] coverages as applicable);
 - (B) Independent Contractors' Protective Liability;
 - (C) Products and Completed Operations (maintain same limits as above until five (5) years after: recordation of the Notice of Completion or final close-out of the Agreement);
 - (D) Personal and Advertising Injury (with Employer's Liability Exclusion deleted);
 - (E) Contractual Liability;
 - (F) Broad Form Property Damage; and
 - (G) Sexual Abuse or Molestation Liability (including coverage for: (i) physical, emotional, psychological injury or harm of a person; and (ii) negligent employment, supervision, investigation, reporting or failing to report to proper authorities, or retention of an employee, agent, representative,

volunteer, Subcontractor, or person whose actual, alleged, attempted, or threatened behavior, conduct, or verbal or nonverbal communication— whether or not intentional— results in physical, emotional, psychological injury or harm of a person or persons).

- 2.4 CONTRACTOR shall provide CITY with a “***certificate of insurance***,” an “***additional insured endorsement***,” and a subrogation endorsement, “***Waiver of Transfer to Rights of Recovery Against Others***”— on forms satisfactory to the City Attorney or City’s Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, all of the Insurance Requirements.
- 2.5 The “certificate of insurance” and an “additional insured endorsement” must state:

“The City of Glendale, and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the City. The City’s insurance, or self-insurance, or both, will apply in excess of— and will not contribute with— this insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the City for any policy cancellation, termination, non-renewal, or reduction in coverage.”

3.0 “BUSINESS AUTOMOBILE” LIABILITY INSURANCE

- 3.1 At its own expense, CONTRACTOR shall obtain, pay for, and maintain— and shall require each of its Subcontractors to obtain and maintain— a “Business Automobile” insurance policy on an **occurrence** basis to fully protect CONTRACTOR and CITY from claims and suits for bodily injury, property damage, and medical payments. The policy must add the City of Glendale and its officers, agents, employees, and representatives as **additional insureds**.
- 3.2 The insurance must not be written for less than the limits of liability specified below or required by law, whichever coverage amount is greater:
- (A) ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury (including accidental death) to any one person; and
 - (B) ONE MILLION DOLLARS (\$1,000,000) per occurrence for property damage; or
 - (C) TWO MILLION DOLLARS (\$2,000,000) combined single limit (“CSL”).

- 3.3 The liability insurance must include all major divisions of coverage and must cover all vehicles, whether rented, leased, hired, scheduled, owned or non-owned.
- 3.4 CONTRACTOR shall provide CITY with a “***certificate of insurance***” and an “***additional insured endorsement***”— on forms satisfactory to the City Attorney or City’s Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, all of the Insurance Requirements.
- 3.5 The “certificate of insurance” and an “additional insured endorsement” must state:

“The City of Glendale, and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the City. The City’s insurance, or self-insurance, or both, will apply in excess of— and will not contribute with— this insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the City for any policy cancellation, termination, non-renewal, or reduction in coverage.”

4.0 GENERAL REQUIREMENTS

- 4.1 At all times, the insurance company issuing the policy must meet all three of these requirements:
- (A) It must be “admitted” insurer by the State of California Department of Insurance or must be listed on the California Department of Insurance’s “List of Approved Surplus Line Insurers” (“LASLI”);
 - (B) It must be domiciled within, and organized under the laws of, a State of the United States; and
 - (C) It must carry a minimum A.M. Best Company Financial Strength Rating of “A:VII,” or better.
- 4.2 If the Agreement requires any of the foregoing insurance coverages to remain in force after the Final Payment, and if they are reasonably available, CONTRACTOR shall submit to CITY— with the final Application for Payment— all certificates and additional insured endorsements evidencing the coverages’ continuation.

- 4.3 A deductible or self-insured retention is subject to CITY's review and approval, in its sole discretion. The insurance company or its authorized representative must state either on the insurance certificate or in a separate correspondence:
- (A) The amount of the deductible, or self-insured retention, or both;
 - (B) Whether a limit of insurance has been lowered by any pending or paid claim; and
 - (C) The current limit amount, as lowered by the pending or paid claim.
- 4.4 Despite any conflicting or contrary provision in CONTRACTOR's insurance policy:
- (A) If CONTRACTOR's insurance company adds CITY, and its officers, agents, employees, and representatives (collectively, "its representatives") as additional insureds, then for all acts, errors, or omissions of CITY, or its representatives, or both, that insurer shall:
 - (1) Pay those sums that CITY, or its representatives, or both, become legally obligated to pay as damages; and
 - (2) Defend— and pay the costs of defending— CITY, or its representatives, or both;
 - (B) CONTRACTOR's insurance is primary;
 - (C) Other insurance (whether primary, excess, contingent or self-insurance, or any other basis) available to CITY, or its representatives, or both, is excess over CONTRACTOR's insurance;
 - (D) CITY's insurance, or self-insurance, or both, will not contribute with CONTRACTOR's insurance policy;
 - (E) CONTRACTOR and CONTRACTOR's insurance company waive— and shall not exercise— any right of recovery or subrogation that CONTRACTOR or the insurer may have against CITY, or its representatives, or both;
 - (F) CONTRACTOR's insurance policy applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or suit is brought, except that the naming of multiple insureds will not increase an insurance company's limits of liability;
 - (G) CONTRACTOR's insurance policy applies to a claim or suit brought by an additional insured against a Named Insured or other insured, arising out of bodily injury, personal injury, advertising injury, or property damage; and

- (H) CITY is not liable for a premium payment or another expense under CONTRACTOR's policy.
- 4.5 At any time during the duration of this Agreement, CITY may do any one or more of the following:
- (A) Review this Agreement's insurance coverage requirements; or
 - (B) Require that CONTRACTOR:
 - (1) Obtain, pay for, and maintain more or less insurance depending on CITY's assessment of any one or more of the following factors:
 - (a) CITY's risk of liability or exposure arising out of, or in any way connected with, the services of CONTRACTOR under this Agreement;
 - (b) The nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, the services of CONTRACTOR under this Agreement; or
 - (c) The availability, or affordability, or both, of increased liability insurance coverage;
 - (2) Reduce or eliminate a deductible or self-insured retention as it applies to CITY; or
 - (3) Obtain, pay for, and maintain a bond (as a replacement for an insurance coverage) from a California corporate surety, guaranteeing payment to CITY for liability, or costs, or both, that CITY incurs during CITY's investigation, administration, or defense of a claim or a suit arising out of this Agreement.
- 4.6 CONTRACTOR shall maintain the insurance policy without interruption, from the Project's commencement date to the Final Payment date, or until a date that CITY specifies for any coverage that CONTRACTOR must maintain after the Final Payment.
- 4.7 CONTRACTOR's insurance company or self-insurance administrator shall mail CITY written notice at least thirty (30) days in advance of the policy's or the self-insurance program's cancellation, termination, non-renewal, or reduction in coverage.
- 4.8 CONTRACTOR shall not allow any insurance to expire, cancel, terminate, lapse, or non-renew. Twenty-one (21) days before its insurance policy's expiration, cancellation, termination, or non-renewal, CONTRACTOR shall deliver to CITY evidence of the required coverage as proof that CONTRACTOR's insurance policy has been renewed or replaced with another insurance policy which, during

the duration of this Agreement, meets all of this Agreement's insurance requirements.

- 4.9 At any time, upon CITY's request, CONTRACTOR shall furnish satisfactory proof of each type of insurance coverage required— including a certified copy of the insurance policy or policies; certificates, endorsements, renewals, or replacements; and documents comprising CONTRACTOR's self-insurance program— all in a form and content acceptable to the City Attorney or City's Risk Manager.
- 4.10 If CONTRACTOR hires, employs, or uses a Subcontractor to perform work, services, operations, or activities on CONTRACTOR's behalf, CONTRACTOR shall ensure that the Subcontractor:
- (A) Meets, and fully complies with, this Agreement's insurance requirements;
 - (B) Delivers to CITY— for its review, or approval, or both— all insurance policies, certificates, and endorsements that this Agreement requires; and
 - (C) Furnishes CITY, at any time upon its request, with a complete copy of the Subcontractor's insurance policy or policies for CITY's review, or approval, or both.
- 4.11 CONTRACTOR's failure to comply with an insurance provision in this Agreement constitutes a breach upon which CITY may immediately terminate or suspend CONTRACTOR's performance of this Agreement, or invoke another remedy that this Agreement or the law allows. At its discretion, CITY may obtain or renew the insurance, and CITY may pay all or part of the premiums. Upon demand, CONTRACTOR shall repay CITY for all sums or monies that CITY paid to obtain, renew, or reinstate the insurance, or CITY may offset the cost of the premium against any sums or monies that CITY may owe CONTRACTOR.

5.0 CONTRACTOR'S SUBMITTAL OF CERTIFICATES AND ENDORSEMENTS

- 5.1 CONTRACTOR shall have its insurance carrier(s) or self-insurance administrator(s) complete and execute the following insurance documents, unless an exception below applies. When CONTRACTOR signs and delivers the Agreement to CITY, CONTRACTOR also shall deliver:
- (A) A "certificate of insurance" for each required liability insurance coverage;
 - (B) CITY's "General Liability/Automobile Liability Special Endorsement" form (L-15), unless this Agreement does not require CONTRACTOR to obtain and maintain Commercial General Liability coverage, Businessowners Liability coverage, or Automobile Liability coverage;

(C) A subrogation endorsement, “**Waiver of Transfer to Rights of Recovery Against Others.**” for Commercial General Liability coverage or Businessowners Liability coverage;

(D) A “certificate of insurance” for Workers’ Compensation insurance; or

If CONTRACTOR is self-insured for workers’ compensation, a copy of the “Certificate of Consent to Self-insure” from the State of California; or

If CONTRACTOR is lawfully exempt from workers’ compensation laws, an “Affirmation of Exemption from Labor Code §3700” form;

(E) A subrogation endorsement, “**Waiver of Our Right to Recover From Others.**” for Workers’ Compensation coverage; and

(F) A complete copy of CONTRACTOR’s Professional Liability insurance policy, including all forms and endorsements attached to it.

5.2 CITY will neither sign the Agreement nor issue a “Notice to Proceed” until the City Attorney or City’s Risk Manager has reviewed and approved the insurance documents. CITY’s decision as to the acceptability of all insurance documents is final. Unless CONTRACTOR obtains CITY’s written approval, CITY will not permit or allow a substitution of an insurance policy, or a change in a certificate’s or an endorsement’s form and content, or both.

6.0 INSURANCE OBLIGATION IS SEPARATE FROM INDEMNITY OBLIGATION

6.1 This Agreement’s insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in this Agreement; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in this Agreement.

EXHIBIT VIII INSURANCE REQUIREMENTS AFFIDAVIT

THE PROPOSER'S INSURANCE COMPANY(S) OR INSURANCE AGENT MUST COMPLETE THIS FORM
AND
THE PROPOSER MUST SUBMIT THIS AFFIDAVIT WITH THE BID FORMS.

I, the undersigned (check one box: ☐ underwriter ☐ agent), certify that I and the Concessionaire listed below have jointly reviewed the "Insurance Requirements" in this Request for Proposals. If the City of Glendale ("City") awards the Concessionaire the contract for the tennis concession, I will be able—within fourteen (14) calendar days after the Concessionaire is notified of the contract's award—to furnish the City with valid insurance forms (including one or more insurance certificates and additional insured endorsements) that fully meet all of the Insurance Requirements.

_____ Name of Insurance Company		_____ Date	
_____ Insurance Agent's Name (Printed)		_____ Insurance Agent's Name (signature)	
_____ Address	_____ City	_____ State	_____ Zip Code
_____ Telephone Number	_____ FAX Number	_____ Email Address	

_____ Concessionaire's Name	_____ Tennis Concession Request for Proposal
--------------------------------	---

Below State the Name of Insurance Company Providing Coverage:

DO NOT write "Will Provide," "To Be Determined," "When Required," or similar phrases.

_____ Commercial General Liability	_____ Automobile Liability
_____ Workers' Compensation Liability	

NOTE TO THE UNDERWRITER / AGENT: If the insurance forms that the Concessionaire submits to the City do not fully comply with the Insurance Requirements, and/or if the Concessionaire fails to submit the forms within the 14-day time limit, the City may: (1) declare the Concessionaire's Proposal non-responsive, and (2) award the contract to the next highest scoring, responsible proposer.
If you have any questions about Insurance Requirements, please contact Mr. Stephen Martin, Risk Management Section, at (818) 548-3781.

**EXHIBIT IX
STANDARD FORM OF AGREEMENT**

FACILITY USE AGREEMENT

_____ *Tennis Courts*

THIS FACILITY USE AGREEMENT ("Agreement"), effective _____, 2014 ("Agreement's Effective Date"), is between the City of Glendale ("**CITY**"), a municipal corporation, and _____ ("**CONTRACTOR**"), a _____ (collectively, "**PARTIES**" or individually, "**PARTY**").

RECITALS

1. **CITY** is a public entity organized and existing under its Charter and the State of California's Constitution.
2. **CONTRACTOR**, whose principal address is _____, California _____, operates _____.
3. **CITY** owns real property and the tennis courts on it known as the _____ Tennis Courts, located at _____, Glendale, California 9120__ ("**Facility**"). The **Facility** consists of:
 - A. _____ (__) tennis courts open to the public; and
 - B. _____ (__) _____ square foot freestanding, single-story, storage room and office.
4. **CITY's** Community Services and Parks Department ("**Parks Department**") currently operates, manages, and maintains the **Facility**.
5. **CITY** needs a private party to operate the **Facility**, by providing various tennis services including, but not limited to: court reservations, classes, clinics, camps, tournaments, and events (collectively, "**Services**"), which are more particularly described in Paragraph __ of this Agreement.
6. On July 7, 2014, **CITY** issued a "Request for Proposals" for Tennis Concessions at Fremont & Glorietta Parks ("RFP")— which is attached as "Exhibit A" and is fully incorporated into this Agreement by this reference— describing **CITY's** need for select a qualified and experienced tennis professional to operate and manage the tennis reservation system and to provide tennis services, and setting forth qualifications, conditions, and requirements for those services.
7. On _____, 2014, **CONSULTANT** submitted a Proposal ("**CONTRACTOR's** Proposal"), which is attached as "Exhibit B" and is fully incorporated into this Agreement by this reference.
8. On _____, 2014, **CITY** mailed **CONTRACTOR** a "Notice of Intent to Award," which is attached as "Exhibit C" and is fully incorporated into this Agreement by this reference.

9. On _____, 2014, the Glendale City Council ("City Council") adopted a Motion— which is attached as "Exhibit D" and is fully incorporated into this Agreement by this reference— accepting **CONTRACTOR's** Proposal and authorizing the City Manager or a designee to enter into and sign a facility use license agreement with **CONTRACTOR**.
10. **CONTRACTOR** desires to use the **Facility**, and from that location, furnish and perform the **Services** that **CITY** seeks, on the terms and conditions described in this Agreement.
11. **CONTRACTOR** possesses the competence, experience, expertise, skill, equipment, personnel, financial wherewithal, legal authority, and other resources necessary to provide and perform the **Services** in a professional and competent manner.
12. **CITY** has determined that **CONTRACTOR's** use of the **Facility**— to provide and perform the **Services** to the community— is in the public interest and fulfills one of the intended purposes of municipal government.

AGREEMENT

(Articles 1 - 56)

CITY and CONTRACTOR agree as follows:

1.0. INCORPORATION OF RECITALS.

1.1. The Recitals constitute the factual basis upon which **CITY** and **CONTRACTOR** have entered into this Agreement. **CITY** and **CONTRACTOR** acknowledge the Recitals' accuracy and, therefore, incorporate them into this Agreement.

2.0. ADMINISTRATION OF FACILITY USE AGREEMENT.

2.1. The Director of Community Services and Parks ("**Parks Director**"), or a designee, will administer this Agreement on **CITY's** behalf. _____ will administer this Agreement on **CONTRACTOR's** behalf.

3.0. TERM.

3.1. Initial Term.

3.1.1. This Agreement is for a period of five (5) years ("**initial term**"), beginning on _____, 2015 ("**starting date**"), and ending on _____, 2019 ("**ending date**"), unless:

- (a) Either **PARTY**, at any time, elects to end this Agreement for any reason, by giving the other **PARTY** written notice at least sixty (60) days before the intended termination date; or
- (b) The Agreement is terminated sooner according to the terms elsewhere in this document.

3.2. Renewal term.

3.2.1. Before the **initial term's ending date**, **CITY** will have the option of renewing this Agreement, five (5) additional times— once in 2020, 2021, 2022, 2023, and 2024— with each renewal for a period of one (1) year ("**renewal term**").

3.2.2. At least one-hundred eighty (180) days before the **initial term's ending date**, **CONTRACTOR** must give **CITY** written notice, advising **CITY** whether **CONTRACTOR** desires to renew this Agreement.

3.2.3. At least ninety (90) days before the **initial term's ending date**, **CITY** will give written notice to **CONTRACTOR**, advising **CONTRACTOR** whether **CITY** has elected to renew this Agreement. Exercise of the renewal option will be at the **Parks Director's** sole discretion and will require the City Manager's written approval. Upon renewal, this Lease and Operating Agreement may be subject to new or additional terms and conditions. Otherwise, without further notice, this on the **initial ending date** specified in Paragraph 3.1.1.

4.0. LICENSE TO ENTER, USE, AND OPERATE FACILITY.

4.1. **CITY** grants to **CONTRACTOR** a non-exclusive, revocable right and privilege ("**license**") to enter upon, use, and operate the **Facility** and to provide and perform the **Services**. **CONTRACTOR** acknowledges that during this Agreement's **initial term** and **renewal term**, and at all times afterwards:

- (a) **CITY** is not leasing the **Facility** to **CONTRACTOR**;
- (b) **CONTRACTOR** is a *licensee* and is not a lessee of the **Facility**;
- (c) **CITY** has title, ownership, possession, and control of the **Facility** and the improvements located on it; and
- (d) **CONTRACTOR** will not contest or resist **CITY's** title, ownership, possession, or control of the **Facility**.

4.2. **CONTRACTOR's** right to enter upon, use, and operate the **Facility** is subject to:

- (a) This Agreement's terms and conditions;
- (b) All existing covenants, conditions, restrictions, reservations, contracts, leases, licenses, easements, encumbrances, and rights-of-way related to the **Facility**, regardless of whether they are recorded to give official notice; and
- (c) The rights, powers, and privileges that **CITY** reserves under this Agreement, including— but not limited to— Paragraph 4.3 of this Agreement.

4.3. **CITY** reserves the right, in common with **CONTRACTOR**, to enter, use, occupy, and operate the **Facility** as public necessity may require, at any time, in **CITY's** sole determination.

4.4. After signing this Agreement, if **CITY** cannot grant **CONTRACTOR** access to, or use or operation of, the **Facility** for any reason:

- (a) **CONTRACTOR** may cancel this Agreement by giving **CITY** written notice;
- (b) **CITY** is not liable for:

- (1) Any damage, cost, or expense that **CONTRACTOR**:
 - (A) Incurred before this Agreement's Effective Date; or
 - (B) Incurs:
 - (i) Under this Agreement; or
 - (ii) While **CONTRACTOR** cannot enter, use, or operate the **Facility**.
- (2) Relocating **CONTRACTOR** to another tennis court, park, site, or area from which **CONTRACTOR** can provide or perform the **Services**.
- (c) **CITY**'s liability to **CONTRACTOR** is limited to the return of all sums that **CONTRACTOR** had paid to **CITY**.

4.5. During this Agreement's **initial term** or a **renewal term**, if **CONTRACTOR** stops using or deserts the **Facility** for a period of more than fourteen (14) consecutive days ("permanently leaves the **Facility**"), **CITY** may consider trade fixtures, equipment, machinery, supplies, materials, furnishings, papers, possessions, or vehicles (collectively, "**CONTRACTOR property**") that **CONTRACTOR** leaves at the **Facility** as abandoned, and **CITY** may dispose of them in any manner allowed by law.

4.6. After this Agreement ends— whether by the **initial term**'s or **renewal term**'s expiration, by written notice of termination from one **PARTY** to the other **PARTY**, upon a **Default** by **CONTRACTOR** or arising out of any other cause, circumstance, or event—

- (a) **CONTRACTOR** must:
 - (1) Stop entering, using, and operating the **Facility**;
 - (2) Remove all **CONTRACTOR property**; and
 - (3) Return all keys to the **Facility**.
- (b) If **CONTRACTOR** continues to enter, use, or operate the **Facility** without **CITY**'s consent:
 - (1) **CONTRACTOR** acknowledges and admits that the continuing and continued entry, use, or operation is wrongful; and
 - (2) **CITY** may file an action or proceeding (whether civil, administrative, or otherwise) to prohibit **CONTRACTOR**'s entering, using, and operating the **Facility**, and if **CITY** prevails:
 - (A) **CITY** may enter the **Facility** and remove all persons and **CONTRACTOR property**; and
 - (B) **CITY** is entitled to monetary damages in the amount of one-thousand dollars (\$1,000.00) per day— for each day that **CONTRACTOR** wrongfully enters, uses, or operates the **Facility**— in addition to any one or more of the rights and remedies listed under Paragraph 42.4.1 of this Agreement, or allowed by law.

5.0. FACILITY USE FEE.

5.1. In consideration of, and in exchange for, **CITY**'s granting to **CONTRACTOR** the **license** to enter, use, and operate the **Facility**, **CONTRACTOR** must pay **CITY** each month the following sum (collectively, "**Facility Use Fee**") which is further described in the "Facility Use Fee Schedule," attached as "EXHIBIT E" to this Agreement and incorporated into it by this reference:

- (a) A flat rate use fee; and
- (b) _____ (____%) of **CONTRACTOR**'s **net profit**, as defined in Paragraph 5.3(b) of this Agreement.

5.2. CONTRACTOR must:

- (a) Submit a "Contractor Facility Use Fee Remittance Form"— attached as "EXHIBIT F" to this Agreement and incorporated into it by this reference— which shows:
 - (1) **CONTRACTOR**'s **gross receipts**, as defined in Paragraph 5.3(a) of this Agreement;
 - (2) **CONTRACTOR**'s expenses; and
 - (3) **CONTRACTOR**'s **net profit**, as defined in Paragraph 5.3(b) of this Agreement;
- (b) Through one of its officers or employees, sign and certify that the information in the Contractor Facility Use Fee Remittance Form is accurate, true, and correct;
- (c) On or before the 15th of each month, submit to **CITY** the Contractor Facility Use Fee Remittance Form (covering the previous month's operations).

5.3. As used in this Agreement:

- (a) "**Gross receipts**" means all money or the equivalent of money (e.g., anything of value) that **CONTRACTOR** receives or derives from using and operating the **Facility**— without any deductions, except for a deduction for California imposed sales or excise taxes collected by **CONTRACTOR**— through or from all of the following sources:
 - (1) Sales of food, beverage (non-alcoholic), goods, and merchandise;
 - (2) Collection of **Facility** rental fees;
 - (3) Collection of tennis lesson, camp, and tournament fees;
 - (4) The **Facility**'s use and operation; and
 - (5) Any other business that **CONTRACTOR** conducts at the **Facility**.
- (b) "**Net profit**" means **gross receipts** less all documented reasonable costs, fees, and expenses that **CONTRACTOR** pays or incurs while using or operating the **Facility** under this Agreement.

5.4. CONTRACTOR must pay the Facility Use Fee:

- (a) By business check, cashier's check, or money order, unless Paragraph 6.6 of this Agreement applies;
- (b) On the **payment due date**, unless it falls on a weekend, a legal holiday listed in either Glendale Municipal Code Section 3.08.010 or California's Government Code, or a day on which City Hall is closed, in which case the **Facility Use Fee** is due on the next business day; and
- (c) At the following address (or any other address that **CITY** later specifies in writing to **CONTRACTOR**):

Payee: City of Glendale

Address: Community Services and Parks Department
ATTN: Gabrielle Goglia
613 E. Broadway, Room 120
Glendale, CA 91206-4399

6.0. LATE PAYMENT - CHARGES.

6.1. CONTRACTOR acknowledges that any one or more of the following acts may cost **CITY** to incur costs and expenses— including, but not limited to, processing, enforcement, and accounting expenses— the exact amounts of which are extremely difficult and impractical to determine on the day that the **PARTIES** sign this Agreement:

- (a) **CONTRACTOR** is late in paying the **Facility Use Fee** or any other amount due under this Agreement;
- (b) **CONTRACTOR** issues a check, draft, or order with non-sufficient funds ("NSF"); or
- (c) **CONTRACTOR** requests a "stop payment" on a check, draft, or order for the payment of money.

6.2. If **CITY** does not receive from **CONTRACTOR** any installment of the **Facility Use Fee**, or any other amount due under this Agreement, or both, within ten (10) days after its due date, **CONTRACTOR** must pay to **CITY** an additional sum of one hundred dollars (\$100.00) as a Late Charge, either or all of which constitutes an additional amount of the **Facility Use Fee**.

6.3. If **CITY** pays or incurs a fee because of **CONTRACTOR**'s NSF or stop payment, **CONTRACTOR** must pay to **CITY** an additional sum of twenty-five dollars (\$25.00) as a NSF or stop payment fee, either or all of which constitutes an additional amount of the **Facility Use Fee**.

6.4. The **PARTIES** acknowledge that on the day that they sign this Agreement, the charges listed in Paragraphs 6.2 and 6.3 represent a fair and reasonable estimate of the costs that **CITY** may incur because of **CONTRACTOR**'s late payment, NSF, or stop payment.

6.5. With any current installment of the **Facility Use Fee**, **CONTRACTOR** must pay **CITY** the Late Charge listed in Paragraph 6.2 and the NSF or stop payment fee listed in Paragraph 6.3, or both.

6.6. When one or more of the situations described in Paragraph 6.1 occurs, **CITY** may:

- (a) Refuse **CONTRACTOR**'s check, draft, or order; and
- (b) Require **CONTRACTOR** to pay by cash or a cashier's check.

6.7. **CITY's** acceptance of any Late Charge, NSF, or "stop payment" fee will not:

- (a) Waive a **Default** of **CONTRACTOR**, including— but not limited to— paying an overdue or back due **Facility Use Fee**;
- (b) Extend the date that the **Facility Use Fee** is due; or
- (c) Prevent **CITY** from exercising any other rights and remedies under this Agreement, and as provided by law.

7.0. PERMITTED USES AND ACTIVITIES.

7.1. At all times during this Agreement's **initial term** or a **renewal term**, and subject to this Agreement's terms and conditions, **CONTRACTOR**:

- (a) Must:
 - (1) Use the **Facility** exclusively for tennis court rentals, tennis classes, tennis camps, tennis-related social programs, tennis tournaments; and
 - (2) Conduct or operate **Facility** and all programs only between the hours of 7:00 a.m. and 10:00 p.m.; and
- (b) May:
 - (1) Sell and serve food and beverage (non-alcoholic);
 - (2) Use the building for food and non-alcoholic beverage sales and pro-shop sales;
 - (3) Sell or give away merchandise; and
 - (4) With **CITY's** prior written approval, charge and collect an entry or admission fee— paid by invitees, guests, or other persons for tournaments.

8.0. PROHIBITED USES AND ACTIVITIES.

8.1. Any one or more of the following prohibited uses, or activities, or both, will cause **CONTRACTOR** to lose the right and privilege of entering, using, and operating the **Facility**:

- (a) **CONTRACTOR** — and participants, clients, guests, or other persons under **CONTRACTOR's** control— must not:

- (1) Use or occupy the **Facility** for any purpose other than one described in Paragraph 7.1(a) of this Agreement.
- (2) Destroy, damage, deface, devalue, ruin, or remove any part of the **Facility**, including its furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials, appurtenances, or landscaping.
- (3) Create, cause, or maintain a nuisance at the **Facility**, including— but not limited to— any one or more of the following:
 - (A) Repeatedly and seriously annoying, disturbing, endangering, inconveniencing, or interfering with neighboring properties, businesses, or residences; or
 - (B) Permitting or allowing:
 - (i) One or more loud, boisterous, disorderly, or intoxicated participants, clients, guests, or persons to linger or remain upon the **Facility**; or
 - (ii) A condition to exist at the **Facility** that is harmful to health, or is indecent or offensive to the senses of a reasonable person of normal sensitivities.
- (4) Engage in or facilitate criminal activity at the **Facility**, including— but not limited to— any one or more of the following:
 - (A) Prostitution (as described in California Penal Code Sections 647(b), 653.22, or any successor legislation);
 - (B) Criminal street gang activity (as described in California Penal Code Section 188.22, or any successor legislation); or
 - (C) Manufacturing, selling, distributing, using, or possessing an illegal drug or controlled substance (as described in California Health and Safety Code Sections 11002 to 11033, 11350 to 11391, or any successor legislation).
- (5) Smoke— as the term is defined in Glendale Municipal Code Section 8.52.030, or any successor legislation— within the **Facility**.
- (6) Keep, store, maintain, operate, or use at the **Facility**:
 - (A) A firearm;
 - (B) An explosive;
 - (C) Oil or gasoline;
 - (D) A substance, material, or device that is combustible or flammable; or
 - (E) A **hazardous material**, as defined in Paragraph 24.2 of this Agreement.
- (7) Violate, while at the **Facility**:

- (A) A (federal, state, local, or **CITY**) law, rule, policy, procedure, regulation, or order.
- (B) A term or provision of this Agreement.
- (b) Without first obtaining **CITY**'s prior written approval, **CONTRACTOR** — and invitees, guests, or other persons under **CONTRACTOR**'s control— must not license, sublicense, rent, let, or sublet the **Facility** (or any part of it) to any individual, business, group, or organization.

9.0. **CONTRACTOR'S OBLIGATIONS AND RESPONSIBILITIES.**

9.1. **CONTRACTOR** must:

- 15) Enforce all rules and regulations for playing tennis, using the tennis courts, and visiting the **Facility**.
- 16) Regulate play and conduct of tennis players.
- 17) Ensure that the courts are being used for tennis instruction and play only, and are not being used for prohibited activities including, but not limited to: soccer, basketball, or skateboarding.
- 18) Keep the **Facility** open during the "Schedule of Operations," which is attached as "EXHIBIT G" to this Agreement and is incorporated into it by this reference:
- 19) Provide instructors who are United States Professional Tennis Association (USPTA) certified for professionals, or who are teaching directly under the supervision of a USPTA certified professional. If **CONTRACTOR** wishes to instruct, **CONTRACTOR** must also be a USPTA certified professional.
- 20) Work with **CITY** staff to fingerprint and submit the required information to the California Department of Justice, at **CONTRACTOR**'s own expense and as required by law, for criminal background check clearance for all persons supervising or having authority over minors. Employees and instructors cannot begin working at the **FACILITY** until a Department of Justice background check has been completed and the person is cleared for working with minors.
- 21) Provide private lessons, or group lessons, or both, and instructions in tennis either by **CONTRACTOR** personally or by qualified employees of **CONTRACTOR**.
- 22) Schedule tournaments and other tennis activities with special interest groups, private groups, tennis clubs, schools, or any combination of them, to assure the best overall, well-rounded tennis program for the community while incorporating public play and use of facilities in the overall program.
- 23) Operate and maintain recreational and competitive tennis programs including, but not limited to: singles and doubles times, recreation and competitive ladders, instructional clinics and academies, and special events.
- 24) Cooperate with **CITY** in granting use of facility, at no charge, for **Parks Department** sponsored programs, contract classes, tournaments, and special events.

- 25) Manage and operate the **Facility** in a manner intended to ensure that persons with disabilities are not excluded— on the basis of their disabilities or any other unlawful reason— from **CONTRACTOR's** programs and services.
- 26) Make every effort to provide reasonable accommodations to persons with disabilities, including providing auxiliary aids and services to ensure equally effective communication and participation.
- 27) Establish and maintain necessary telephone service— including voicemail or an answering device or service— and internet service for an online reservation/registration program, such as Activenet, or another online software program that patrons can use for facility scheduling and activity registration.
- 28) Charge the rental rates listed in the "Facility Rental Fee Schedule," which is attached as "EXHIBIT H" to this Agreement and is incorporated into it by this reference.
- 29) Operate and manage the tennis courts in a manner calculated to enhance revenue flow to **CITY** and in a manner that will provide quality service for public and private use.

9.2. At **CONTRACTOR's own expense, **CONTRACTOR** must pay for, obtain, and maintain:**

- (a) All licenses, permits, certificates, authorizations, or approvals as (federal, state, local, or **CITY**) law requires; and
- (b) All equipment, machinery, tools, supplies, and materials related to the **FACILITY's** operation, maintenance, and repair, including, but not limited to:
 - (1) Tennis racquets, balls, and pitching machines;
 - (2) **CONTRACTOR** installed tennis screens;
 - (3) Light bulbs;
 - (4) Toilet paper, toilet seat covers, paper towels, hand soap;
 - (5) Broom, mop, bucket, leaf blower, cleaning fluids; and
 - (6) Telephone, voice mail or answering machine, computer, **CITY** approved reservation software, cash register, stationary supplies.

10.0. CITY'S OBLIGATIONS AND RESPONSIBILITIES.

10.1. CITY will be responsible for:

- 7) Electrical service wiring, mechanical, and plumbing (including restroom).
- 8) Fence repair/replacement.
- 9) Tree trimming that affects safety and safe play on courts.
- 10) Landscape maintenance of the park area adjacent to the courts.
- 11) Repair/replacement of benches inside tennis courts.
- 12) Repair of court surfaces in the event of a safety concern (crack, surface defect).

11.0. CONTROL OF FACILITY.

11.1. The **Parks Director** or a designee has:

- (a) Full and absolute control of the **Facility** while **CONTRACTOR** enters, uses, and operates it; and
- (b) The right to make changes, alterations, and improvements to the **Facility** and its surrounding grounds, when **CITY** determines that they are appropriate, necessary, or in **CITY's** best interest.

12.0. CONDITION OF FACILITY.

12.1. CONTRACTOR has thoroughly inspected the **Facility**— including, all furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials, appurtenances, and landscaping— and by **CONTRACTOR's** entering, using, and operating the **Facility**, **CONTRACTOR**:

- (a) Acknowledges that the **Facility** is in:
 - (1) Good repair, appearance, and working order;
 - (2) A safe, sanitary, clean, neat, and operative condition;
- (b) Knows about any and all unsafe, dangerous, or hazardous conditions or defects of the **Facility**; and
- (c) Accepts the **Facility** in its present condition.

12.2. Within ten (10) days after the expiration, termination, or cancellation of this Agreement's **initial term** or **renewal term**, **CONTRACTOR** must return the **Facility** to **CITY** in as good condition— reasonable wear and tear excepted— as when **CONTRACTOR** received the **Facility** at the start of this Agreement.

13.0. MAINTENANCE OF FACILITY.

13.1. CONTRACTOR's Responsibilities.

13.1.1. During this Agreement's **initial term** or **renewal term**, and at **CONTRACTOR's** own expense, **CONTRACTOR** must:

- (a) Maintain the **Facility**— including, all tennis courts, buildings, furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials, appurtenances, and landscaping in:
 - (1) Good repair, appearance, and working order; and
 - (2) A safe, sanitary, clean, neat, and operative condition;
- (b) Promptly eliminate, correct, or repair an unsafe, dangerous, or hazardous condition or defect that **CONTRACTOR** creates or causes at the **Facility**;
- (c) Wash the tennis courts on a weekly basis, and as needed, within water conservation guidelines determined by **CITY**;
- (d) Dry-broom/sweep tennis courts once a month and as needed;
- (e) Blow off tennis courts, using a portable leaf blower or equivalent device, as needed and within the noise ordinance guidelines set by **CITY**;
- (f) Wet-mop sticky spills or other matter on the tennis court that creates an unsafe, dangerous, or hazardous condition or defect;
- (g) Ensure that all court lighting is fully operating.
- (h) Comply with all appropriate water and power conservation methods;
- (i) Keep the **Facility**' interior— and the exterior area within 10 feet of the **Facility** (measured in all directions from the **Facility**)— free of litter, debris, trash, accumulating garbage, or objectionable odors;
- (j) Dispose of all garbage and waste in one or more trash containers;
- (k) Empty trash containers daily in a bin adjacent to the maintenance yard;
- (l) Properly use and operate all electrical and plumbing fixtures and pipes, and keep them as clean and sanitary as their condition permits; and
- [(m) Clean, service, supply, and maintain restrooms for tennis customers at Glorietta Tennis Courts, including, but not limited to: providing toilet paper, toilet seat covers, paper towels, and hand soap; and cleaning sinks, floors, toilets and walls.]

13.2. CITY's Responsibilities.

13.2.1. During this Agreement's **initial term** or **renewal term**, **CITY** will:

- (a) Maintain the **Facility's** storage room's and office's:

- (1) Roof, exterior walls, foundation (collectively, “**structure**”);
- (2) Electrical, plumbing (collectively, “**building systems**”);
- (3) Landscaping; and

(b) Treat a pest or rodent problem at the **Facility**.

13.2.2. If any part of the **Facility** needs maintenance that is **CITY**’s responsibility, **CONTRACTOR** must follow the procedures, described in Article 15, for requesting maintenance service.

14.0. REPAIRS TO FACILITY.

14.1. CONTRACTOR’s Responsibilities.

14.1.1. At **CONTRACTOR**’s own expense, **CONTRACTOR** must repair or replace:

- (a) Court nets, when necessary for safe or effective play;
- (b) Tennis court lighting, including light bulbs, lamps, electrical ballasts, and lens covers when the lighting is not functioning, burned out, or flickering. **CONTRACTOR** may elect to have **CITY** perform the work and **CONTRACTOR** must reimburse **CITY** for services that **CITY** renders; and
- (c) Tennis racquets, balls, court screens, furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials that **CONTRACTOR** purchases for the **Facility** or installs or maintains at the **Facility**.

14.2. CITY’s Responsibilities.

14.2.1. At **CITY**’s own expense, **CITY** will:

- (a) Repair the **Facility**’s **structure**, **building systems**, tennis court fencing, and landscaping; and
- (b) Repair or replace benches inside the tennis courts.

14.2.2. If any part of the **Facility** needs repair that is **CITY**’s responsibility, **CONTRACTOR** must follow the procedures, described in Article 15, for requesting repair service.

15.0. REQUEST TO CITY FOR MAINTENANCE OR REPAIR.

15.1. Non-Emergency Maintenance and Repairs.

15.1.1. **CONTRACTOR** must notify in writing one of the **Parks Department**’s staff members identified under Paragraph 15.2.1(a) of this Agreement, of an occurrence listed below— within twenty-four (24) hours after **CONTRACTOR** observes it, or a person reports it to **CONTRACTOR**:

- (a) The **Facility** needs maintenance or repair that is **CITY**'s responsibility;
- (b) A safety hazard exists at the **Facility**; or
- (c) A pest or rodent problem exists at the **Facility**.

15.1.2. At its option and in its sole discretion, **CITY** may:

- (a) Perform the maintenance or repair of the **Facility** (or any part of it) using its own personnel, or hire a contractor to do the work, or do both; and
- (b) Charge **CONTRACTOR** for one or more of the costs of maintenance, or repair, or both, of the **Facility**, when **CITY** determines that the maintenance, repair, or damage resulted from a careless, negligent, or intentional act, error, or omission of **CONTRACTOR** ("**CONTRACTOR was at fault**").

15.1.3. If **CONTRACTOR** does not submit a written request— as Paragraph 15.1.1 requires— **CITY** will not perform the maintenance, or repair, or both.

15.1.4. After **CONTRACTOR** submits a written request— as Paragraph 15.1.1 requires— the **Parks Department's** Maintenance Office will:

- (a) Review the written request;
- (b) Evaluate whether **CONTRACTOR was at fault**;
- (c) If **CONTRACTOR was at fault**, decide whether to charge **CONTRACTOR** for **CITY's** performing the maintenance, or repair, or both;
- (d) Give written notice to **CONTRACTOR** of its decision, which is final, binding on **CONTRACTOR**, and non-appealable by **CONTRACTOR**; and
- (e) Perform and complete an approved repair.

15.1.5. When **CITY** determines that **CONTRACTOR was at fault** for the maintenance, repair, or damage:

- (a) The **Parks Department's** Maintenance Office will send **CONTRACTOR** an invoice for the cost of all labor, equipment, and materials for performing the maintenance, or repair, or both; and
- (b) **CONTRACTOR** must fully:
 - (1) Reimburse **CITY** for the costs described in Paragraph 15.1.5(a); and
 - (2) Pay the invoice within ten (10) days after the billing date listed on the invoice.

15.2. Emergency Repairs.

15.2.1. If an emergency or other situation requires **CITY's** immediate response to a maintenance or repair issue, **CONTRACTOR**:

- (a) Must call or e-mail either one of the persons listed below to request the repair or maintenance:

(1) Gabrielle Goglia,
Community Services Supervisor for Sports: (818) 262-4322

ggoglia@ci.glendale.ca.us (2) Raymond Wong,
Building Repair Manager: (818) 262-9194

Rwong@ci.glendale.ca.us

(b) Must not call or hire a repair company or a service company, unless Gabrielle Goglia or Raymond Wong authorizes **CONTRACTOR** to call the company and hire it to perform the repair or maintenance.

15.2.2. After **CITY** performs the emergency maintenance or repair of the **Facility** (or any part of it) using its own personnel, or hiring a contractor to do the work, or doing both, the **Parks Department's** Maintenance Office will:

- (a) Evaluate whether **CONTRACTOR was at fault**;
- (b) If **CONTRACTOR was at fault**, decide whether to charge **CONTRACTOR** for **CITY's** performing the maintenance, or repair, or both; and
- (c) Give written notice to **CONTRACTOR** of its decision, which is final, binding on **CONTRACTOR**, and non-appealable by **CONTRACTOR**.

15.2.3. When **CITY** determines that **CONTRACTOR was at fault** for the emergency maintenance or emergency repair, or the damage, Paragraph 15.1.5 applies.

16.0. ALTERATION OF FACILITY; MECHANICS' LIEN.

16.1. Without **CITY's** prior written approval, **CONTRACTOR** must not make— or permit another person to make— any addition, alteration, modification, or improvement (collectively, "**alteration**") to the **Facility**, including but not limited to:

- (a) Painting;
- (b) Changing the surface of the courts;
- (c) Adding or changing a lock; or
- (d) Installing an antenna or satellite dish.

16.2. If **CONTRACTOR** proposes an **alteration** to the **Facility**, **CONTRACTOR** must submit to **CITY** a written request that describes the work, materials, cost, and completion date. Within thirty (30) days after **CITY** has received **CONTRACTOR's** written request, the **Parks Department's** Maintenance Manager or Community Services Supervisor for Sports will:

- (a) Review the written request;
- (b) Decide whether to approve the written request, approve it with conditions, or deny it; and
- (c) Give written notice to **CONTRACTOR** of **CITY's** decision, which is final, binding on **CONTRACTOR**, and non-appealable by **CONTRACTOR**.

16.3. If **CITY** approves **CONTRACTOR's** request for an **alteration** to the **Facility**, then on **CITY's** behalf, **CONTRACTOR** must post on the **Facility** and record with the Los Angeles County Registrar-Recorder/County Clerk a "Notice of Non-Responsibility" form at least thirty (30) days before

CONTRACTOR— or any person, firm, contractor, or subcontractor on **CONTRACTOR**'s behalf— does any one or more of the following:

- (a) Begins work, construction, or an **alteration** at the **Facility**; or
- (b) Purchases materials or supplies for installation or use at the **Facility**.

16.4. CONTRACTOR must:

- (a) Keep the **Facility** free and clear of any lien for work, labor, services, materials, or equipment;
- (b) Post a bond to release a lien against the **Facility**; and
- (c) Indemnify, defend, and hold harmless **CITY**, when any one or more of the following situations occur:
 - (1) A lien— arising out of **CONTRACTOR**'s **alteration** to the **Facility**— is recorded or obtained against the **Facility**; or
 - (2) An action or proceeding (whether civil, administrative, or otherwise)— concerning a lien against the **Facility** that arises out of **CONTRACTOR**'s **alteration** to the **Facility**— is filed or initiated.

16.5. If CONTRACTOR makes an unauthorized alteration to the Facility, CONTRACTOR:

- (a) Is responsible for the **alteration**'s maintenance, repairs, and costs (including any future maintenance and repair expenses during this Agreement's **initial term** or **renewal term**); and
- (b) Must pay for all labor, equipment, and material costs to restore the **Facility** to its original state, if **CITY** requires its restoration or the unauthorized **alteration** does not comply with **CITY**'s Building and Safety Codes or **CITY**'s standards.

17.0. DAMAGE OR DESTRUCTION OF FACILITY.

17.1. If the **Facility** becomes damaged or destroyed— whether partially, totally, temporarily, or otherwise— during this Agreement's **initial term** or **renewal term**, so as to seriously interfere with **CONTRACTOR**'s use of the **Facility**, either **PARTY** immediately may terminate this Agreement upon delivering written notice to the other **PARTY**.

17.2. If **CONTRACTOR** or its officers, agents, employees, representatives, invitees, or guests in any way cause or contribute to the **Facility**' damage or destruction— whether partially, totally, temporarily, or otherwise:

- (a) **CITY** has the right to immediately cancel this Agreement, and

(b) **CONTRACTOR** must fully reimburse **CITY** for all costs in repairing, restoring, rebuilding, or replacing:

(1) The **Facility**; and

(2) The **Facility**' furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials, appurtenances, and landscaping.

17.3. At its option, **CITY** may elect to rebuild, restore, or replace all or any part of the **Facility**, and the **Facility**' furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials, appurtenances, and landscaping. **CITY** may do so without repairing, restoring, rebuilding, or replacing any one or more of the following items:

(a) An **alteration** to the **Facility** by **CONTRACTOR**;

(b) A fixture attached to the **Facility** by **CONTRACTOR**; or

(c) **Personal possessions** of **CONTRACTOR**.

18.0. CONDEMNATION; NO RELOCATION; WAIVER OF RIGHTS.

18.1. If a public agency— other than **CITY**— condemns, or by eminent domain takes, the **Facility**, in whole or in part, for a public purpose that substantially impairs **CONTRACTOR**'s use and occupancy of the **Facility**, then:

(a) At **CITY**'s option, this Agreement's **initial term** or **renewal term** will end upon **CITY**'s giving written notice to **CONTRACTOR**;

(b) **CITY** has the right to receive the entire condemnation award for:

(1) The land; and

(2) The buildings, structures, improvements, equipment, machinery, and fixtures that it solely built or placed at the **Facility**;

(c) **CITY** will proportionately abate any current **Facility Use Fee** due or owing from **CONTRACTOR**; and

(d) **CONTRACTOR** acknowledges that:

(1) This Agreement does not give any rights to **CONTRACTOR** for compensation or damages from **CITY** under federal eminent domain law, California eminent domain law, or both.

(2) **CITY** will not provide any compensation, relocation assistance, payments, or benefits of any kind to **CONTRACTOR** under any one or more of the following laws and related regulations, or under and any successor legislation or regulations:

(A) California Government Code Sections 7260 through 7277; or

(B) 42 United States Code Sections 4601 through 4638.

18.2. When **CONTRACTOR** signs this Agreement, **CONTRACTOR**:

(a) Waives, and gives up from **CITY**, any right to damages, compensation, relocation assistance, payments, and benefits of any kind, including, but not limited to, payment or financial assistance for any one or more of the following:

- (1) Moving expenses;
- (2) Relocating from the **Facility**; or
- (3) Obtaining or establishing a replacement tennis facility;
- (b) Must not make a claim against, sue, or prosecute **CITY** or its officers, agents, employees, and representatives for damages, compensation, relocation assistance, payments, or benefits of any kind; and
- (c) Understands and acknowledges that **CONTRACTOR**'s waiver of damages, compensation, relocation assistance, payments, and benefits under Paragraph 18.2(a) of this Agreement and promise not to file a claim, sue, or prosecute under Paragraph 18.2(b) of this Agreement are material inducements for **CITY**'s entering into and signing this Agreement with **CONTRACTOR**.

19.0. CITY'S ENTRY UPON FACILITY.

19.1. **CITY**, its officers, agents, employees, or representatives may enter the **Facility**, for any one or more of the following reasons, at any time:

- (a) Conducting an inspection;
- (b) Performing maintenance;
- (c) Making a repair or **alteration**, or doing any other work that **CITY** decides is necessary or appropriate;
- (d) Responding to an emergency (including, but not limited to, a fire or a plumbing leak);
- (e) Exhibiting the **Facility** to a consultant, contractor; or subcontractor;
- (f) Conducting one or more **CITY** tours, classes, programs, or events;
- (g) Confirming that **CONTRACTOR** is complying with this Agreement's terms and conditions; or
- (h) **CONTRACTOR** permanently leaves the **Facility**.

19.2. To the extent reasonably possible, **CITY** will enter, inspect, repair, improve, exhibit, or use the **Facility** in a manner that minimally interferes with **CONTRACTOR**'s use of the **Facility**.

20.0. UTILITIES.

20.1. Without cost to **CONTRACTOR**, **CITY** will provide and pay for the following utilities, services, equipment, and charges:

- (a) Water;

- (b) Electric;
- (c) Sewer; and
- (d) Refuse bin collection.

20.2. Without cost to **CITY**, **CONTRACTOR** must provide and pay for the following utilities, services, equipment, and charges:

- (a) Telephone services; and
- (b) Broadband internet access, digital subscriber line (DSL), Voice-over-Internet protocol (VoIP), telephone or cable modem, or other data connection.

21.0. KEYS; LOCKS.

21.1. CONTRACTOR will receive two (2) keys to the **Facility**.

21.2. CONTRACTOR must ensure that all gates are locked when they leave the **Facility**.

21.3. If **CONTRACTOR** loses a key or get locked out of the **Facility**, **CITY**:

- (a) Will provide an extra key to **CONTRACTOR**; and
- (b) May charge **CONTRACTOR** twenty-five dollars (\$25.00), which **CONTRACTOR** must pay to **CITY**.

21.4. CONTRACTOR must not:

- (a) Enter the **Facility** by force, through a window, door, or fence, or otherwise without a key; or
- (b) Change or add a lock to the **Facility**, without:
 - (1) **CITY**'s prior written approval; and
 - (2) Providing **CITY** with a key to the lock.

21.5. On or before this Agreement's expiration, **CONTRACTOR** must return all keys or **CONTRACTOR** must pay **CITY** five-hundred dollars (\$500.00) for changing the locks.

22.0. PARKING.

22.1. Because parking spaces at the **Facility** are for use only by the public, **CONTRACTOR** must not do any one or more of the following at the **Facility**:

- (a) Park, keep, store, or maintain:
 - (1) A motor vehicle; or
 - (2) An inoperative motor vehicle, or a vehicle that lacks an engine, transmission, wheel, tire, door, windshield, or any other major part or equipment necessary to operate safely on a street or highway; or
- (b) Repair a motor vehicle.

23.0. STORAGE.

23.1. CONTRACTOR may store inside the building:

- (a) Tennis equipment, materials, supplies, and machinery that **CONTRACTOR** owns or uses; and
- (b) Merchandise, and non-perishable food and beverage that **CONTRACTOR** sells.

23.2. CONTRACTOR must not keep, store, maintain, operate, or repair at the **Facility** any one or more of the following items:

- (a) A snowmobile, boat, or personal watercraft; or
- (b) An electric generator, motor, or machinery.

24.0. HAZARDOUS MATERIALS.

24.1. Except for using a household cleaner or product in a typical quantity and in an ordinary manner for maintaining, operating, repairing, using, or occupying the **Facility**, **CONTRACTOR** must not use, handle, keep, store, maintain, release, disperse, or dispose of a **hazardous material**— as defined in Paragraph 23.2 of this Agreement— at the **Facility**.

24.2. A “**hazardous material**” means any solid, liquid, or gas that can harm people, other living organisms, property, or the environment, and:

- (a) Is radioactive, flammable, explosive, toxic, corrosive, biohazardous, an oxidizer, an asphyxiant, a pathogen, an allergen; or
- (b) May have another characteristic that renders it hazardous in a specific circumstance.

25.0. MERCHANDISE.

25.1. At **CONTRACTOR**'s option, **CONTRACTOR** may sell or give away merchandise. Except for an item that is enclosed or fixed in a glass or metal container, **CONTRACTOR** may have posters, photographs, books, games, memorabilia, racquets, tennis balls, audio / video tapes, shirts, caps, and other clothing. All merchandise is subject to approval by the **Parks Director** or a designee who will not unreasonably withhold it.

25.2. **CONTRACTOR** must not sell or give away: cigarettes, cigars, chewing tobacco, drug paraphernalia, controlled substances, narcotics, illegal drugs, or an item that the **Parks Director** withheld approval under Paragraph 25.1 of this Agreement.

26.0. VENDING MACHINES, ACCESSORY STANDS, ROVING VENDORS.

26.1. Without **CITY**'s prior written approval, **CONTRACTOR** must not:

- (a) Install, or permit another person to install:
 - (1) A vending machine; or
 - (2) An accessory stand or building.
- (b) Remove, disconnect, or disable an existing vending machine— placed at the **Facility** by a vendor under contract with **CITY**— which must remain operative at all times.
- (c) Permit or allow one or more persons to rove about the **Facility** for the purpose of soliciting, or selling food, alcoholic beverages, goods, or merchandise.

27.0. DISCRIMINATION.

27.1. **CONTRACTOR** must not discriminate against any person, firm, entity, or organization— who uses the **Facility**; or who is subject to this Agreement; or whom **CONTRACTOR** provides or performs **Services** for under this Agreement— because of race, color, religion, religious belief, natural origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

27.2. Evidence that **CONTRACTOR** committed discrimination constitutes:

- (a) A **Default** under Paragraph 42.1.1 of this Agreement; and
- (b) A breach of this Agreement, upon which **CITY** may immediately invoke any one or more of the remedies listed under Paragraph 42.4.1 of this Agreement, or allowed by law, or both.

28.0. SIGNS AND ADVERTISEMENTS.

28.1. **CITY** intends that the entire grounds of the **Facility** are a non-public forum. This venue is not a public forum, designated public forum, limited public forum, or other type of forum. Inside the **Facility**, **CITY** will only allow one or more banners with:

- (a) A commercial advertisement for the sole purpose of generating revenue for **CITY**, and not for the purpose of providing a forum for expression;
- (b) A commercial advertisement for financial support of a tennis team; or

- (c) The logo, slogan, photograph, or depiction of a tennis team, or an opposing participating tennis team, or both, for promotion or marketing of a class or tournament.

28.2. Because **CITY** prohibits, and it will not accept for display, a banner containing a political advertisement or other non-commercial, issue-oriented advertisements, a banner described in Paragraphs 28.1 of this Agreement must contain a commercial advertisement only— it must do no more than propose a commercial transaction.

28.3. Except as Paragraph 28.4 of this Agreement provides, **CONTRACTOR** must not:

- (a) Display, place, or maintain a sign, banner, or advertisement in, on, or upon any part of the **Facility's** grounds; and
- (b) Permit or allow a person, firm, entity, or organization to display, place, or maintain a sign, banner, or advertisement in, on, or upon any part of the **Facility's** grounds.

28.4. **CITY** will allow **CONTRACTOR** to display inside the **Facility** one or more of the banners described in Paragraph 28.1 of this Agreement. Before **CONTRACTOR** displays a banner, **CONTRACTOR** must:

- (a) Comply with the conditions and requirements described in **CITY's** "Glendale Sports Complex and Verdugo Skate Park – Banner Display Application (and Banner Guidelines)," which is attached as "EXHIBIT I" to this Agreement and is incorporated into it by this reference;
- (b) Complete the "Banner Display Application Form" for a proposed banner and submit that form to **CITY's** Sports Complex Office, at least nine (9) days before the desired posting date;
- (c) Receive **CITY's** written approval;
- (d) Provide **CITY's** Community Services Supervisor for Sports with the fabricated banner— conforming to this Agreement, the Banner Guidelines, and **CITY's** written approval— not later than two (2) days before the desired posting date;
- (e) Remove a banner at the end of the authorized posting period, or at the end of this Agreement, whichever date occurs earliest; and
- (f) List— on the Contractor Facility Use Fee Remittance Form ("EXHIBIT F")— the amount of each sale, sponsorship, contribution, or donation money that **CONTRACTOR** accepts, receives, or derives for displaying banners at the **Facility**.

28.5. **CITY** will:

- (a) Review **CONTRACTOR's** "Banner Display Application Form";
- (b) Within seven (7) days after receiving the application form, give **CONTRACTOR** written notice of **CITY's** decision, approving or denying the requested banner and its proposed location;

- (c) Within two (2) days after **CITY's** Community Services Supervisor for Sports receives the fabricated banner:
 - (1) Examine it to ensure that it conforms to and complies with this Agreement, the Banner Guidelines, and **CITY's** written approval; and
 - (2) Post it, if it conforms to and complies with this Agreement, the Banner Guidelines, and **CITY's** written approval.

28.6. At any time, **CITY** may refuse to accept a banner, or remove a banner that **CITY** previously approved, when **CITY** decides, in its sole determination, that a banner:

- (a) Does not conform to or comply with, or violates, any one or more of the following:
 - (1) This Agreement;
 - (2) The Banner Guidelines; or
 - (3) **CITY's** written approval;
- (b) Impedes, hinders, frustrates, delays, or affects this Agreement's performance;
- (c) Increases **CITY's** liability, risk, or exposure;
- (d) Is injurious or harmful to **CITY's** business, operation, reputation, or public image;
- (e) Is prone to impair the public's confidence in **CITY**.

or

29.0. CONTRACTOR'S PROMOTION OF CLASSES, TOURNAMENTS, PROGRAMS AND FACILITY.

29.1. **CONTRACTOR** may advertise classes, tournaments, programs, and the **Facility** through advertisements, flyers, television or radio commercials, the internet, or **CONTRACTOR's** website.

29.2. For any proposed classes, tournaments, programs, and the **Facility** advertising, promotional, and marketing material, **CONTRACTOR** must obtain the written approval of the **Park Director** or a designee, who will not unreasonably withhold it. However, in its sole discretion, **CITY** may reject an advertisement, promotional handout, or marketing campaign of **CONTRACTOR** which, in **CITY's** sole determination:

- (a) Fails to comport to this Agreement's terms or conditions;
- (b) Impedes, hinders, frustrates, delays, or affects this Agreement's performance;
- (c) Is false, deceptive, or misleading;
- (d) Increases **CITY's** liability, risk, or exposure;
- (e) Is injurious or harmful to **CITY's** business, operation, reputation, or public image;
- (f) Is prone to impair the public's confidence in **CITY**.

or

29.3. If **CITY** receives negative public reaction to **CONTRACTOR**'s advertising or marketing campaign of classes, tournaments, programs, and the **Facility**, **CITY** will send written notice to **CONTRACTOR**. Upon **CONTRACTOR**'s receipt of **CITY**'s written notice, **CONTRACTOR** must stop immediately that advertisement, or marketing campaign, or both, and must take all reasonable steps to prevent further publication, republication, broadcast, or rebroadcast.

30.0. PUBLICITY BY CITY.

30.1. **CITY** may publicize classes, tournaments, programs, and the **Facility**, as **CITY** deems appropriate, through one or more mediums, including, but not limited to: **CITY**'s publications, press releases, web site, and government access cable television channel (**GTV6**). **CITY** may also use in its promotional material a photo or video clip of the **Facility** and one or more of its programs.

30.2. Without prior written approval from **CITY**, **CONTRACTOR** must not post, place, or maintain a flyer, poster, advertisement, sign, banner, pennant, or announcement on any **CITY** property (including a public building, light pole, traffic signal or sign, or tree) to publicize one or more programs.

31.0. PHOTOGRAPHS AND RECORDINGS BY CITY.

31.1. Under this Agreement, **CONTRACTOR** grants to **CITY** and **GTV6** the *non-exclusive* right to:

- (a) Photograph and record (audio, or video, or both) activities at the **Facility**;
- (b) Keep and reproduce photographs, negatives, and recordings, or any part of them, by any method; and
- (c) Broadcast or distribute the photographs and recordings— or license or allow others to do so— for a non-commercial purpose, including promoting one or more games, as **CITY** may deem necessary or advisable.

32.0. PROPERTY RIGHTS.

32.1. Except as this Agreement provides, neither **CONTRACTOR** nor **CITY** has the right to use— in any way— the name (commercial, trade, or otherwise), copyright(s), trademark(s), service mark(s), logo(s), insignia(s), or other identification of the other **PARTY** without its written approval.

32.2. **CONTRACTOR** grants **CITY** a royalty-free, non-exclusive license to use, reproduce, and display **CONTRACTOR**'s name and logo for advertising, promoting, and marketing one or more games during this Agreement's **initial term** and **renewal term**.

32.3. **CITY** grants **CONTRACTOR** a royalty-free, non-exclusive license to use, reproduce, and display **CITY**'s name for advertising, promoting, and marketing the games and other events sponsored by **CONTRACTOR** during this Agreement's **initial term** and **renewal term**.

32.4. **CONTRACTOR** must not use, reproduce, or display **CITY**'s corporate insignia in any document or medium, including, but not limited to: an advertisement, promotional material, television or radio commercial, or the internet or **CONTRACTOR**'s website.

32.5. Each **PARTY** represents that it has the right, power, and authority to grant the license. The **PARTIES** acknowledge that this Article's provisions do not convey or transfer any right, title, or ownership interest in a **PARTY**'s name, logo, or insignia.

32.6. Upon this Agreement's cancellation or termination, or upon the **initial term's** and **renewal term's** expiration:

- (a) **CITY** must discontinue all uses, advertisements, and displays of **CONTRACTOR's** name and logo, except for a period of six (6) months after the **initial term's** or **renewal term's** expiration (or for an additional time period that the **PARTIES** agree upon in writing), **CITY** may distribute promotional materials in its inventory containing **CONTRACTOR's** name and logo, and **CITY's** government access cable television channel (GTV6) may rebroadcast any video recording of a practice or game; and
- (b) **CONTRACTOR** must discontinue all uses, advertisements, and displays of **CITY's** name, except that for a period of six (6) months after the **initial term's** or **renewal term's** expiration (or for an additional time period that the **PARTIES** agree upon in writing), **CONTRACTOR** may distribute promotional materials in its inventory containing **CITY's** name.

32.8. Upon **CITY's** request, **CONTRACTOR** must provide **CITY** with evidence of compliance with Paragraph 32.7 of this Agreement.

33.0. INJURY OR DAMAGE TO PERSONS OR PROPERTY.

33.1. While **CONTRACTOR** uses or operates the **Facility**, if an incident or accident (with or without injury) occurs at the **Facility**, or if damage occurs to private or **CITY** property at the **Facility**, **CONTRACTOR** must:

- (a) Reasonably assist the injured person, and as may be necessary or appropriate, promptly call for medical assistance or dial public emergency assistance (911);
- (b) Document the incident, accident, or damage using the appropriate **CITY** forms;
- (c) Obtain information from **CITY's** **GPD** and **GFD** personnel who are at the scene—as they may allow—and from witnesses while they are present;
- (d) Submit the forms and reports to the **Parks Department's** Sports Complex Office not later than the next day; and
- (e) Assist and fully cooperate with **CITY** in its investigation of an incident or accident.

34.0. INDEMNIFICATION.

34.1. **CONTRACTOR** assumes all responsibility and liability for damages to property and injuries to persons—including accidental death—that may arise out of **CONTRACTOR's**, or its officers', agents', employees', representatives', invitees', or guests' entry on, use or operation of, or activities upon, the **Facility**.

34.2. To the maximum extent permitted by law—including, but not limited to, California Civil Code Section 2778—**CONTRACTOR** agrees to indemnify, defend, and hold harmless **CITY** and its officers, agents, employees, and representatives (individually and collectively, "**CITY INDEMNITEE**") from and against a "**liability**" (as defined in Paragraph 34.3 of this Agreement), or an "**expense**" (as defined in Paragraph 34.4 of this Agreement), or both, that arise out of, relate to, or are caused by any one or more of the following:

- (a) An act, error, or omission of **CONTRACTOR**, or its officers, agents, employees, representatives, invitees, or guests during **CONTRACTOR's**, or its officers', agents', employees', representatives', invitees', or guests' entry on, use or operation of, or activities upon, the **Facility**;
- (b) The condition of the **Facility**— including its seating areas— during **CONTRACTOR's**, or its officers', agents', employees', representatives', invitees', or guests' use or operations of, or activities upon, the **Facility**; or
- (c) **CONTRACTOR's** entry, use, operations, or activities in or upon the **Facility**.

34.3. "Liability" means claims, suits, actions, causes of action, proceedings, judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the **liability** is:

- (a) Actual or alleged;
- (b) In contract or in tort; or
- (c) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.

34.4. "Expense" means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

- (a) Attorney's fees; and
- (b) Costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;
 - (1) Fees of an accountant, expert witness, consultant, or other professional; or
 - (2) Pre- or post- judgment interest or settlement interest.

34.5. Under this Article, **CONTRACTOR's** defense and indemnification obligations:

- (a) Apply to a **liability**, or an **expense**, or both, that arise out of, relate to, or are caused by the actual or alleged passive negligence of a **CITY INDEMNITEE**; but
- (b) Do not apply to a **liability**, or an **expense**, or both, that arise out of, relate to, or are caused by the sole active negligence or willful misconduct of a **CITY INDEMNITEE**.

34.6. To the extent that **CONTRACTOR's** insurance policy provides an upfront defense to a **CITY INDEMNITEE**, **CONTRACTOR's** obligation to defend a **CITY INDEMNITEE** under this Article:

- (a) Means that **CONTRACTOR** must provide and pay for legal counsel, acceptable to **CITY**, for the **CITY INDEMNITEE**;
- (b) Occurs when a claim, suit, complaint, pleading, or action against a **CITY INDEMNITEE** arises out of, relates to, or asserts an act, error, or omission of **CONTRACTOR**; and
- (c) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies **CONTRACTOR**.

34.7. Paragraph 34.6 of this Agreement does not limit or extinguish **CONTRACTOR**'s obligation to reimburse a **CITY INDEMNITEE** for the costs of defending the **CITY INDEMNITEE** against a **liability**, or an **expense**, or both. A **CITY INDEMNITEE**'s right to recover defense costs and attorney's fees under this Article does not require, and is not contingent upon, the **CITY INDEMNITEE**'s first:

- (a) Requesting that **CONTRACTOR** provide a defense to the **CITY INDEMNITEE**; or
- (b) Obtaining **CONTRACTOR**'s consent to the **CITY INDEMNITEE**'s tender of defense.

34.8. **CONTRACTOR**'s obligation to indemnify, defend, and hold harmless a **CITY INDEMNITEE** will remain in effect and will be binding upon **CONTRACTOR** whether the **liability**, or the **expense**, or both, accrues— or is discovered— before or after this Agreement's expiration, cancellation, or termination.

34.9. This Article's indemnification and defense provisions are separate and independent from the insurance provisions in Article 35 of this Agreement. In addition, the indemnification and defense provisions in this Article:

- (a) Are neither limited to nor capped at the coverage amounts that **CITY** now, or at a later date, specifies under the insurance provisions in Article 35; and
- (b) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 35.

35.0. INSURANCE.

35.1. When **CONTRACTOR** signs and delivers this Agreement to **CITY**, and during this Agreement's **initial term** or **renewal term**, **CONTRACTOR** must furnish **CITY** with insurance forms that fully meet the requirements of— and contain provisions entirely consistent with— all of the "Insurance Requirements," which are attached as "EXHIBIT J" (J-1 through J-5) to this Agreement and are incorporated into it by this reference.

35.2. If **CONTRACTOR** obtains any form of insurance coverage— not otherwise required by **CITY**— for damage to, or destruction of, the **Facility**, then:

- (a) The policy must name **CITY** as an additional loss payee; and
- (b) **CONTRACTOR** must assign to **CITY** **CONTRACTOR**'s right to the insurance proceeds.

35.3. If **CITY** has obtained a fire, liability, or other insurance policy for the **Facility**:

- (a) **CONTRACTOR**— and invitees, guests, or other persons under **CONTRACTOR**'s control— must not commit an act or omission at the **Facility**, or use the **Facility**, in any manner that:
 - (1) Increases the cost of the insurance policy's premium; or
 - (2) Causes the insurance policy's cancellation or non-renewal.
- (b) **CONTRACTOR** must pay **CITY**— as additional Fee— any increase in the cost of **CITY**'s obtaining, maintaining, or replacing an insurance policy when **CONTRACTOR** commit an act or omission at the **Facility**, or use the **Facility**, in

any manner that results in an outcome described in Paragraph 35.3(a) of this Agreement.

35.4. This Agreement's insurance provisions:

- (a) Are separate and independent from the indemnification and defense provisions in Article 34 of the Agreement; and
- (b) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 34 of the Agreement.

36.0. TAXES.

36.1. CONTRACTOR recognizes and understands that this Agreement may create a "taxable possessory interest," subject to the payment of property taxes. Under California Revenue and Taxation Code Section 107, and California Property Tax Rules 21 through 28, a taxable possessory interest exists when a person— such as **CONTRACTOR**— has the right to a beneficial use of tax exempt, government-owned real property— such as the **Facility**— with or without paying rent or a fee. This taxable interest results from either **CONTRACTOR's actual possession** of government-owned real property, or **CONTRACTOR's right to use** government-owned real property.

36.2. CONTRACTOR must pay:

- (a) All taxes levied on the possessory interest; and
- (b) All tax bills for the possessory interest— which cover the time period during which **CONTRACTOR** used the **Facility**— that are due and payable, after:
 - (1) This Agreement's **initial term** or **renewal term** ends; or
 - (2) **CONTRACTOR permanently leaves** the **Facility**.

37.0. ASSIGNMENT AND SUBLETTING.

37.1. Without **CITY's** prior written approval, **CONTRACTOR** must not:

- (a) License, sublicense, rent, let, or sublet the **Facility** (or any part of it) for any purpose, activity, event, or use— other than the regular rental of tennis courts to participants; or
- (b) Assign, transfer, pledge, hypothecate, grant, or encumber this Agreement or any interest in it.

37.2. Any licensing, sublicensing, renting, letting, subletting, assignment or other act that violates this Agreement:

- (a) Is null and void; and
- (b) Constitutes:
 - (1) A **Default** under Paragraph 42.1.1 of this Agreement; and
 - (2) A breach of this Agreement, upon which **CITY** may immediately invoke any one or more of the remedies listed under Paragraph 42.4.1 of this Agreement, or allowed by law, or both.

37.3. CITY's acceptance of the **Facility Use Fee** from a person, business, or organization other than **CONTRACTOR** will not constitute a waiver of this Article's prohibitions.

38.0. BANKRUPTCY; COURT APPOINTED RECEIVER.

38.1. If **CONTRACTOR** becomes incompetent, bankrupt, or insolvent; or if a guardian, trustee, receiver, or other judicial officer is appointed to administer or oversee **CONTRACTOR's** affairs:

- (a) **CITY**, at its option and sole discretion, may immediately:
 - (1) Cancel this Agreement and declare it null and void; and
 - (2) Enter, use, and operate the **Facility**;
- (b) Neither this Agreement nor any interest in it becomes an asset of the guardian, trustee, receiver, or other judicial officer; and
- (c) The guardian, trustee, receiver, or other judicial officer will not have any right, title, or interest in or to the **Facility** because of this Agreement.

39.0. INDEPENDENT CONTRACTOR.

39.1. While **CONTRACTOR** uses or operates the **Facility**, **CONTRACTOR**:

- (a) Is an "independent contractor," and is not an officer, employee, agent, partner, representative, or joint venturer of **CITY**;
- (b) Is not authorized to transact business, enter into contracts, or otherwise make commitments on behalf of **CITY**; and
- (c) Has sole responsibility for:
 - (1) Paying their employees' and personnel's salaries, benefits, unemployment, and workers' compensation; and
 - (2) Making all necessary payroll deductions for their employees and personnel, including: insurance, Social Security, Medicare, income taxes, and other applicable withholdings or taxes.

39.2. **CITY** does not provide any accident, medical, or disability insurance for **CONTRACTOR**. **CONTRACTOR** is not entitled to receive from **CITY** a benefit, right, or emolument that **CONTRACTOR** affords to their employees, including, but not limited to compensation, retirement, insurance, and workers' compensation. **CONTRACTOR** is financially responsible for all those expenses.

40.0. REQUIRED RECORDS; REPORTS; AUDITS BY CITY.

40.1. For all records, books, papers, or documents that:

- (a) Are related to the **Facility Use Fee**; and

- (b) This Agreement— and the **Parks Department's** procedures, regulations, or directives— requires **CONTRACTOR** to maintain,

CONTRACTOR must:

- (1) Permit **CITY** or its authorized representatives to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe them, at all reasonable times; and
- (2) Keep and maintain them, in their original form, while this Agreement is in effect and for a period of four (4) years after this Agreement ends— whether by the **initial term's** or **renewal term's** expiration, by written notice of termination from one **PARTY** to the other **PARTY**, or upon a **Default** by **CONTRACTOR**.

41.0. COMPLIANCE WITH LAWS.

41.1. While **CONTRACTOR** enters and uses the **Facility**:

(a) **CONTRACTOR** must comply with all:

(1) (Federal, state, **CITY**, and local) laws, rules, procedures, regulations, directives, or orders; and

(2) Zoning, building, health, safety, and fire requirements, concerning the **Facility**, or its use or its occupancy, or both; and

(b) **CITY** may amend or adopt laws, rules, procedures, regulations, directives, or orders.

42.0. DEFAULT, NOTICE, AND REMEDIES.

42.1. Default.

42.1.1. Default under this Agreement occurs upon any one or more of the following events:

- (a) **CONTRACTOR** fails to make any payment of the **Facility Use Fee** or any other fee or payment that this Agreement requires, as and when due;
- (b) **CONTRACTOR**— whether partially, fully, temporarily, or otherwise:
 - (1) Refuse or fail to observe, perform, or fulfill any covenant, condition, obligation, or provision of this Agreement;
 - (2) Refuse or fail to pay for, obtain, maintain, or renew a required license, permit, certificate, authorization, or approval; or

- (3) Refuse or fail to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;
 - (4) Commit an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while this Agreement is in effect; or
- (c) **CONTRACTOR**, invitees, guests, or other persons under **CONTRACTOR**'s control:
 - (1) Destroy, damage, deface, devalue, ruin, or remove any part of the **Facility**, including its furniture, furnishings, appliances, equipment, fixtures, machinery, supplies, materials, appurtenances, or landscaping;
 - (2) Annoy, disturb, endanger, inconvenience, or interfere with neighboring properties or premises, or people who visit the park grounds around the **Facility**;
 - (3) Create, cause, or maintain:
 - (A) A nuisance; or
 - (B) A condition at the **Facility** that is harmful to health, or is indecent or offensive to the senses of a reasonable person of normal sensitivities;
 - (4) Engage in or facilitate criminal activity at the **Facility**;
 - (5) Disregard or violate any (federal, state, local, or **CITY**) law, rule, procedure, regulation, directive, or order;
- (d) **CONTRACTOR** fails to pay for, obtain, maintain, or renew one or more insurance policies that this Agreement requires;
- (e) **CONTRACTOR** fails to comply with one or more indemnification, defense, or hold harmless provisions that this Agreement requires; or
- (f) **CONTRACTOR** refuses or fails to repair the **Facility** as this Agreement requires;
- (g) **CONTRACTOR** refuses or fails to maintain the **Facility** in the condition, manner, or state that this Agreement requires; or
- (h) **CONTRACTOR** licenses, sublicenses, rents, lets, or sublets the **Facility** (or any part of it) outside of regular rental of courts to participants, without **CITY**'s written approval;
- (i) **CONTRACTOR**:
 - (1) Or another party for or on behalf of **CONTRACTOR**: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
 - (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying **CITY**, or without **CITY**'s written authorization;

- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers—whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying **CITY**, or without **CITY**'s written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on **CONTRACTOR**'s behalf, is convicted under state or federal law, while this Agreement is in effect, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty; or
- (j) Upon any other justifiable cause or reason, as reasonably determined by the **Parks Director** or a designee.

42.2. Notice of Default.

42.2.1. If **CITY** deems that **CONTRACTOR** is in **Default**, or that **CONTRACTOR** has failed in any other respect to satisfactorily perform the responsibilities, obligations, or duties specified in this Agreement, **CITY** will give **CONTRACTOR** a written **Notice of Default** that:

- (a) Describes the violation of the Agreement, or the problem with **CONTRACTOR**'s responsibilities, obligations, or duties;
- (b) Specifies the time period within which **CONTRACTOR** must correct the violation or problem; and
- (c) May state one or more corrective measures, or a particular manner of correction.

42.2.2. **CONTRACTOR** must correct the violation or problem within the time period that **CITY** specifies, and in the manner that **CITY** requires, in the **Notice of Default**.

42.3. Force Majeure.

42.3.1. If an event or condition constituting a “force majeure”— including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster— prevents or delays a **PARTY** from performing or fulfilling an obligation under this Agreement, the **PARTY** is not in **Default**, under Paragraph 42.1.1 of this Agreement, of the obligation. A delay beyond a **PARTY**'s control automatically extends the time, in an amount equal to the period of the delay, for the **PARTY** to perform the obligation under this Agreement. The **PARTIES** must prepare and sign an appropriate document acknowledging any extension of time under this Paragraph.

42.4. Remedies upon Default.

42.4.1. After **CITY** has given **CONTRACTOR** the notice described in Paragraph 42.2.1 of this Agreement, and after the time for **CONTRACTOR** to correct the violation or problem has passed, **CITY** may take any one or more of the following actions, without **CITY**'s having to consider— or having to impose as a prerequisite— progressive discipline, an escalating penalty, or a lesser remedy:

- (a) **CITY** may terminate, cancel, or void— in whole or in part— this Agreement, and all rights of **CONTRACTOR**;

- (b) **CITY** may enter and take control of the **Facility**;
- (c) **CITY** may remove **CONTRACTOR**, and **CONTRACTOR** property from the **Facility**;
- (d) At any time and without further advance notice, **CITY** may investigate **CONTRACTOR**'s violation, or alleged violation, of this Agreement;
- (e) **CITY** may— in whole or in part and for any length of time— immediately suspend this Agreement;
- (f) Upon written notice to **CONTRACTOR**, **CITY** may extend the time in which **CONTRACTOR** must correct the **Default**;
- (g) **CITY** may file an action or proceeding (whether civil, administrative, or otherwise) to enforce this Agreement's terms, or to recover damages for **CONTRACTOR**'s breaking or violating this Agreement, or both;
- (h) **CITY** may withhold all moneys, or a sum of money, due **CONTRACTOR** under this Agreement, which in **CITY**'s sole determination, are sufficient to secure **CONTRACTOR**'s performance of the duties and obligations under this Agreement;
- (i) **CITY** may allow another person, entity, or organization to enter and use the **Facility** for the same purpose, use, or reason as **CONTRACTOR**'s under this Agreement, without **CITY**'s incurring any liability to **CONTRACTOR** or
- (j) **CITY** may pursue any other available, lawful right, remedy, or action.

43.0. ENTIRE AGREEMENT.

43.1. Neither **CONTRACTOR** nor **CITY** has made any promises or representations, other than those contained in this Agreement or those implied by law. Therefore, this Agreement:

- (a) Represents the entire and integrated agreement between the **PARTIES**; and
- (b) Supersedes all prior and contemporaneous communications, negotiations, understandings, promises, and agreements— either oral or written.

43.2. The **PARTIES** may modify this Agreement (or any part of it) by a written amendment with **CITY**'s and **CONTRACTOR**'s signature.

44.0. INTERPRETATION.

44.1. This Agreement is the product of negotiation and compromise by both **PARTIES**. Every provision in this Agreement must be interpreted as though the **PARTIES** equally participated in its drafting.

44.2. Despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the Agreement must not be construed against the **PARTY** causing the uncertainty to exist. In

interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachment.

45.0. HEADINGS.

45.1. All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

46.0. GOVERNING LAW; JURISDICTION.

46.1. California's laws govern this Agreement's construction and interpretation.

46.2. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendment, modifications, and successor legislation.

46.3. If **CONTRACTOR** or **CITY** brings a lawsuit to enforce or interpret one or more provisions of this Agreement, jurisdiction is in the Superior Court of the County of Los Angeles, California, or where otherwise appropriate, in the United States District Court, Central District of California. **CONTRACTOR** and **CITY** acknowledge that the Agreement was negotiated, entered into, executed, and performed in the City of Glendale, California.

47.0. WAIVER OF BREACH.

47.1. If a **PARTY** fails to require the other **PARTY** to perform any term of this Lease and Operating Agreement, that failure does not prevent the **PARTY** from later enforcing that term, or any other term. If a **PARTY** waives the other **PARTY**'s breach of a term, that waiver is not treated as waiving a later breach of the term.

47.2. A waiver of a term is valid only if it is in writing and signed by the **PARTY** waiving it.

48.0. FEES AND COSTS.

48.1. The **prevailing party**— as defined in Paragraph 48.2— is entitled to reasonable attorney's fees, costs, and necessary disbursement— in addition to any other relief to which that **PARTY** may be entitled— if a **PARTY** brings an action at law or in equity to enforce or interpret this Agreement's provisions or terms.

48.2. A "**prevailing party**" has the same meaning as that term is defined in California Code of Civil Procedure Section 1032(a)(4).

48.3. Reasonable attorney's fees of the City Attorney's office means the fees regularly charged by private attorneys who:

- (a) Practice in a law firm located in Los Angeles County; and
- (b) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's services were rendered.

49.0. FURTHER ASSURANCES.

49.1. Upon **CITY**'s request at any time, **CONTRACTOR** must promptly:

- (a) Take further necessary action; and
- (b) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

50.0. TIME IS OF THE ESSENCE.

50.1. Except when this Agreement states otherwise, time is of the essence in this Agreement. **CONTRACTOR** acknowledges that this Agreement's time limits and deadlines are reasonable for **CONTRACTOR's** performing this Agreement.

50.2. Unless this Agreement specifies otherwise, any reference to "day" or "days" means calendar days and not business days. A reference to the time of day refers to local time for Glendale, California.

50.3. If the last day for giving notice, performing an act, or paying **Rent** or any other amount under this Agreement falls on a weekend, a legal holiday listed in either Glendale Municipal Code Section 3.08.010 or California's Government Code, or a day when City Hall is closed, the period is extended to and including the next day that **CITY** is open for business.

51.0. NOTICES.

51.1. The **PARTIES** must submit in writing all notices and correspondence that this Agreement requires or permits, and must deliver the notices and correspondence to the places identified in Paragraph 51.4. The **PARTIES** may give notice by:

- (a) Personal delivery;
- (b) U.S. mail, first class postage prepaid;
- (c) "Certified" U.S. mail, postage prepaid, return receipt requested;
- (d) Facsimile; or
- (e) Email.

51.2. All written notices or correspondence sent in the described manner will be presumed "given" to a **PARTY** on whichever date occurs earliest:

- (a) The date of personal delivery;
- (b) The third (3rd) business day following deposit in the U.S. mail, when sent by "first class" mail;
- (c) The date on which the **PARTY** or the **PARTY's** agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
- (d) The date of transmission, when sent by facsimile or email.

51.3. At any time, by providing written notice to the other **PARTY, CITY** or **CONTRACTOR** may change the street address or place, telephone or facsimile number, or email address for giving notice.

51.4. A **PARTY** must deliver a notice or correspondence to the other **PARTY** at the following place:

CITY: City of Glendale
Community Services and Parks Department
613 East Broadway, Room 120
Glendale, CA 91206-4399
Attn: Gabrielle Goglia

Tel. No. : (818) 937-7444
Fax. No.: (818) 409-7144
E-mail: ggoglia@ci.glendale.ca.us

CONTRACTOR:

Tel. No.:
Fax. No.:
E-mail:

52.0. SURVIVAL.

52.1. This Paragraph and the obligations set forth in Paragraphs 4.3, 4.4, 4.5, 4.6, 5.1, 5.2, 6.1, 6.2, 6.3, 6.4, 6.5, 6.7, 8.1, 12.2, 14.1, 15.1.2, 15.1.5, 15.2.2, 15.2.3, 16.4, 16.5, 17.2, 17.3, 18.1, 18.2, 19.1, 20.2, 21.4, 24.1, 28.3, 28.6, 30.1, 30.2, 31.1, 32.5, 32.6, 32.7, 32.8, 33.1, 34.1, 34.2, 34.3, 34.4, 34.5, 34.6, 34.7, 34.8, 34.9, 35.1, 35.2, 35.3, 35.4, 36.2, 37.1, 37.2, 37.3, 38.1, 39.1, 39.2, 40.1, 42.1, 42.1.1, 42.4.1, 43.1, 43.2, 44.1, 44.2, 45.1, 46.1, 46.2, 46.3, 47.1, 47.2, 48.1, 48.2, 48.3, 49.1, 50.1, 50.2, 50.3, 50.4, 51.2, 52.1, 52.3, 52.4 survive this Agreement's expiration, cancellation, or termination.

53.0. SEVERABILITY.

53.1. The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

54.0. COUNTERPARTS.

54.1. This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document.

54.2. The **PARTIES** must sign a sufficient number of counterparts, so that each **PARTY** will receive a fully executed original of this Agreement.

55.0. TOTAL NUMBER OF PAGES.

55.1. In total, this Agreement, including the Exhibits and signature blocks, is _____ () pages.

56.0. REPRESENTATIONS – AUTHORITY.

56.1. The **PARTIES** represent that:

- (a) They have read this Agreement, fully understand its contents, and have received a copy of it;
- (b) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its terms; and
- (c) They have executed this Agreement on the date opposite their signature.

Executed at Glendale, California.

CITY OF GLENDALE:

By _____
Scott Ochoa
City Manager

Date: _____, 2014

CONTRACTOR:

By _____

Date: _____, 2014

APPROVED AS TO FORM:

City Attorney _____
Date

EXHIBIT LIST

“EXHIBIT A”: (50 pages)	Request for Proposals for Tennis Concessions at Fremont & Glorietta Parks
“EXHIBIT B”: (__ pages)	Contractor’s Proposal
“EXHIBIT C”: (1 page)	Notice of Intent to Award
“EXHIBIT D”: (1 page)	City Council Motion
“EXHIBIT E”: (1 page)	Facility Use Fee Schedule
“EXHIBIT F”: (1 page)	Contractor Facility Use Fee Remittance Form
“EXHIBIT G”: (1 page)	Schedule of Operation
“EXHIBIT H”: (__ page)	Facility Rental Fee Schedule
“EXHIBIT I”: (2 pages)	Glendale Sports Complex and Verdugo Skate Park – Banner Display Application (and Banner Guidelines)
“EXHIBIT J”: (7 pages)	Insurance Requirements